

**NLWJC - KAGAN**

**STAFF & OFFICE - D.C. CIRCUIT**

**BOX 006 - FOLDER 011 DC**

**Elena Kagan News 1 [3]**

# FOIA MARKER

**This is not a textual record. This is used as an  
administrative marker by the William J. Clinton  
Presidential Library Staff.**

---

**Collection/Record Group:** Clinton Presidential Records

**Subgroup/Office of Origin:** Counsel Office

**Series/Staff Member:** Sarah Wilson

**Subseries:**

---

**OA/ID Number:** 14686

**FolderID:**

---

**Folder Title:**  
Elena Kagan News 1 [3]

**Stack:**

**V**

**Row:**

**13**

**Section:**

**2**

**Shelf:**

**11**

**Position:**

**1**

The Associated Press, October 1, 1998

"She (offered) very warm congratulations and a very strong statement that she was directly accessible to me and she looked forward to working together," Lockhart recalled.

Marsha Berry, Mrs. Clinton's press secretary, said her boss had no hand in Lockhart's selection.

"But I know she's glad he's the one," she said.

Lockhart himself had some doubt after he and the rest of the country heard Clinton admit on national television Aug. 17 that he had been lying about an affair with Ms. Lewinsky. During a moment alone with the president during the Russia-Ireland trip in early September, Lockhart raised the matter.

"I got the sense that the president recognized the mistake he made," Lockhart said. "I, for one, don't need more than that."

Lockhart has had to deal with his share of political failure. During a decade in which Republicans had a lock on the White House, Lockhart in the 1980s was on the losing end of Democratic presidential campaigns three times - Jimmy Carter in 1980, Walter Mondale in 1984 and Michael Dukakis in 1988.

He grew up in the New York City suburb of Suffern, N.Y., the son of journalists. Not far out of his teens he felt the tug of politics and campaign work. He snagged a spot on the Carter re-election campaign in 1980, and then moved back and forth between politics, television journalism and corporate public relations before McCurry persuaded him to take the job of chief spokesman for the 1996 Clinton-Gore campaign.

LANGUAGE: ENGLISH

LOAD-DATE: October 1, 1998

LEVEL 1 - 23 OF 166 STORIES

Copyright 1998 The Austin American-Statesman  
Austin American-Statesman

October 1, 1998

SECTION: News; Pg. A20

LENGTH: 767 words

HEADLINE: New press secretary keeps humor

BYLINE: Robert Burns

BODY:

WASHINGTON -- Midway through a European tour, President Clinton and his entourage were winging their way to Belfast, Northern Ireland. Word got out that the president's press secretary-in-waiting, Joe Lockhart, had overslept in Moscow and missed Air Force One.

Austin American-Statesman, October 1, 1998

Not content to take the needling and let it drop, Lockhart -- once he had caught up with the presidential party -- raised a few eyebrows by jokingly borrowing words from Clinton, whose admission of having lied about Monica Lewinsky was hanging like a cloud over the trip.

"I take responsibility for my own actions," Lockhart deadpanned to reporters. "I deeply regret it. I'm dealing with the people I have hurt the most. And I'll have nothing further to say."

Classic Lockhart. Humility with humor, not afraid to deliver a poke in the presidential ribs.

"It just struck me that everybody needed to lighten up a little bit," Lockhart recalled of that difficult day in the Clinton camp. "If I could make a joke at my expense -- even a little bit at the president's expense -- and it would lighten the mood and loosen people up," then it was worth trying.

Lockhart figures to have plenty more chances to put his wit to use in a White House under siege. After a year and a half as a deputy to the widely admired Mike McCurry, Lockhart takes over as top spokesman Monday with just over two years left in Clinton's term.

He approaches the new assignment with a mixture of fear and fascination.

"You'd be a fool not to be daunted and intimidated by this task," he said in a recent interview in the high-ceilinged West Wing office that is the Grand Central Station of presidential public relations. "It is a complex mix of emotions. I'm serious when I say daunted and intimidated. But I'm also incredibly excited."

Colleagues inside the White House seem pleased, too.

"He's smart, and he has an understanding of the issues," said Elena Kagan, deputy chief for domestic policy. "People feel he has earned it and the president absolutely made the right decision."

Lockhart, 39, is a stocky man with salt-and-pepper hair and a ready smile. A gifted gabber, quick with a quip, he also is known for flashes of temper. He can be easygoing, but also boldly political.

The press secretary's most visible role is conducting the daily briefing for White House reporters, an exercise in verbal gymnastics in which one slip of the tongue can carry a heavy penalty.

When Clinton stole into the White House briefing room July 23 to spring the announcement that McCurry was leaving and Lockhart was taking over, he said Lockhart knows what it will take to succeed.

"Joe knows that he can only serve my interests well if he takes care of yours also," Clinton told reporters.

Behind the scenes, the press secretary also must juggle internal White House pressures -- don't say too much, don't say too little, keep this secret, leak that secret, humor the press, challenge the press. And because the press secretary speaks not just for the president but for his entire administration,

Austin American-Statesman, October 1, 1998

Lockhart must be prepared to handle issues ranging from AIDS policy to foreign policy.

"It's the biggest professional challenge I will face in my lifetime," Lockhart said.

He knows his chances of succeeding will depend in part on keeping the trust of first lady Hillary Rodham Clinton, who called him at home the evening Clinton announced he would succeed McCurry.

"She (offered) very warm congratulations and a very strong statement that she was directly accessible to me and she looked forward to working together," Lockhart recalled.

During a moment alone with the president during the Russia-Ireland trip in early September, Lockhart raised the Lewinsky matter with President Clinton.

"I got the sense that the president recognized the mistake he made," Lockhart said. "I, for one, don't need more than that."

Lockhart has had to deal with his share of political failure. During a decade in which Republicans had a lock on the White House, Lockhart in the 1980s was on the losing end of Democratic presidential campaigns three times -- Jimmy Carter in 1980, Walter Mondale in 1984 and Michael Dukakis in 1988.

He grew up in the New York City suburb of Suffern, N.Y., the son of journalists. Not far out of his teens, he felt the tug of politics and campaign work.

He snagged a spot on the Carter re-election campaign in 1980, and then moved back and forth between politics, television journalism and corporate public relations before McCurry persuaded him to take the job of chief spokesman for the 1996 Clinton-Gore campaign.

LOAD-DATE: October 6, 1998

LEVEL 1 - 24 OF 166 STORIES

Copyright 1998 Times Printing Company  
The Chattanooga Times

October 1, 1998, Thursday

SECTION: National; Pg. A13

LENGTH: 816 words

HEADLINE: Press job daunts, excites Lockhart

BYLINE: By Robert Burns, The Associated Press

BODY:

WASHINGTON -- Midway through a European tour, President Clinton and his entourage were winging their way to Belfast, Northern Ireland. Word got out that the president's press secretary-in-waiting, Joe Lockhart, had overslept in

The Chattanooga Times, October 1, 1998

Moscow and missed Air Force One.

Not content to take the needling and let it drop, Lockhart -- once he had caught up with the presidential party -- raised a few eyebrows by jokingly borrowing words from Clinton, whose admission of having lied about Monica Lewinsky was hanging like a cloud over the trip.

"I take responsibility for my own actions," Lockhart deadpanned to reporters. "I deeply regret it. I'm dealing with the people I have hurt the most. And I'll have nothing further to say."

Classic Lockhart. Humility with humor, not afraid to deliver a poke in the presidential ribs.

"It just struck me that everybody needed to lighten up a little bit," Lockhart recalled of that difficult day in the Clinton camp. "If I could make a joke at my expense -- even a little bit at the president's expense -- and it would lighten the mood and loosen people up," then it was worth trying.

Lockhart figures to have plenty more chances to put his wit to use in a White House under siege. After a year and a half as a deputy to the widely admired Mike McCurry, Lockhart takes over as top spokesman Monday with just over two years left in Clinton's term.

He approaches the new assignment with a mixture of fear and fascination.

"You'd be a fool not to be daunted and intimidated by this task," he said in a recent interview in the high-ceilinged West Wing office that is the Grand Central Station of presidential public relations. "It is a complex mix of emotions. I'm serious when I say daunted and intimidated. But I'm also incredibly excited."

Colleagues inside the White House seem pleased, too.

"He's smart and he has an understanding of the issues," said Elena Kagan, deputy chief for domestic policy. "People feel he has earned it and the president absolutely made the right decision."

Lockhart, 39, is a stocky man with salt-and-pepper hair and a ready smile. A gifted gabber, quick with a quip, he also is known for flashes of temper. He can be easygoing, but also boldly political.

The press secretary's most visible role is conducting the daily briefing for White House reporters, an exercise in verbal gymnastics in which one slip of the tongue can carry a heavy penalty.

When Clinton stole into the White House briefing room July 23 to spring the announcement that McCurry was leaving and Lockhart was taking over, he said Lockhart knew what it would take to succeed.

"Joe knows that he can only serve my interests well if he takes care of yours also," Clinton told reporters.

Behind the scenes, the press secretary also must juggle internal White House pressures -- don't say too much, don't say too little, keep this secret, leak

The Chattanooga Times, October 1, 1998

that secret, humor the press, challenge the press. And because the press secretary speaks not just for the president but for his entire administration, Lockhart must be prepared to handle issues ranging from AIDS policy to foreign policy.

"It's the biggest professional challenge I will face in my lifetime," Lockhart says.

He knows his chances of succeeding will depend in part on keeping the trust of first lady Hillary Rodham Clinton, who called him at home the evening Clinton announced he would succeed McCurry.

"She (offered) very warm congratulations and a very strong statement that she was directly accessible to me and she looked forward to working together," Lockhart recalled.

Marsha Berry, Mrs. Clinton's press secretary, said her boss had no hand in Lockhart's selection.

"But I know she's glad he's the one," she said.

Lockhart himself had some doubt after he and the rest of the country heard Clinton admit on national television Aug. 17 that he had been lying about an affair with Ms. Lewinsky. During a moment alone with the president during the Russia-Ireland trip in early September, Lockhart raised the matter.

"I got the sense that the president recognized the mistake he made," Lockhart said. "I, for one, don't need more than that."

Lockhart has had to deal with his share of political failure. During a decade in which Republicans had a lock on the White House, Lockhart in the 1980s was on the losing end of Democratic presidential campaigns three times -- Jimmy Carter in 1980, Walter Mondale in 1984 and Michael Dukakis in 1988.

He grew up in the New York City suburb of Suffern, N.Y., the son of journalists. Not far out of his teens he felt the tug of politics and campaign work. He snagged a spot on the Carter re-election campaign in 1980, and then moved back and forth between politics, television journalism and corporate public relations before McCurry persuaded him to take the job of chief spokesman for the 1996 Clinton-Gore campaign.

LANGUAGE: ENGLISH

LOAD-DATE: October 1, 1998

LEVEL 1 - 25 OF 166 STORIES

Copyright 1998 Associated Press  
AP Online

September 30, 1998; Wednesday 14:36 Eastern Time

SECTION: Washington - general news

AP Online, September 30, 1998

LENGTH: 815 words

HEADLINE: Lockhart Takes Press Secretary Role

BYLINE: ROBERT BURNS

DATELINE: WASHINGTON

BODY:

Midway through a European tour, President Clinton and his entourage were winging their way to Belfast, Northern Ireland. Word got out that the president's press secretary-in-waiting, Joe Lockhart, had overslept in Moscow and missed Air Force One.

Not content to take the needling and let it drop, Lockhart once he had caught up with the presidential party raised a few eyebrows by jokingly borrowing words from Clinton, whose admission of having lied about Monica Lewinsky was hanging like a cloud over the trip.

"I take responsibility for my own actions," Lockhart deadpanned to reporters. "I deeply regret it. I'm dealing with the people I have hurt the most. And I'll have nothing further to say."

Classic Lockhart. Humility with humor, not afraid to deliver a poke in the presidential ribs.

"It just struck me that everybody needed to lighten up a little bit," Lockhart recalled of that difficult day in the Clinton camp. "If I could make a joke at my expense even a little bit at the president's expense and it would lighten the mood and loosen people up," then it was worth trying.

Lockhart figures to have plenty more chances to put his wit to use in a White House under siege. After a year and a half as a deputy to the widely admired Mike McCurry, Lockhart takes over as top spokesman Monday with just over two years left in Clinton's term.

He approaches the new assignment with a mixture of fear and fascination.

"You'd be a fool not to be daunted and intimidated by this task," he said in a recent interview in the high-ceilinged West Wing office that is the Grand Central Station of presidential public relations. "It is a complex mix of emotions. I'm serious when I say daunted and intimidated. But I'm also incredibly excited."

Colleagues inside the White House seem pleased, too.

"He's smart and he has an understanding of the issues," said Elena Kagan, deputy chief for domestic policy. "People feel he has earned it and the president absolutely made the right decision."

Lockhart, 39, is a stocky man with salt-and-pepper hair and a ready smile. A gifted gabber, quick with a quip, he also is known for flashes of temper. He can be easy going, but also boldly political.



AP Online, September 30, 1998

The press secretary's most visible role is conducting the daily briefing for White House reporters, an exercise in verbal gymnastics in which one slip of the tongue can carry a heavy penalty.

When Clinton stole into the White House briefing room July 23 to spring the announcement that McCurry was leaving and Lockhart was taking over, he said Lockhart knows what it will take to succeed.

"Joe knows that he can only serve my interests well if he takes care of yours also," Clinton told reporters.

Behind the scenes, the press secretary also must juggle internal White House pressures don't say too much, don't say too little, keep this secret, leak that secret, humor the press, challenge the press. And because the press secretary speaks not just for the president but for his entire administration, Lockhart must be prepared to handle issues ranging from AIDS policy to foreign policy.

"It's the biggest professional challenge I will face in my lifetime," Lockhart says.

He knows his chances of succeeding will depend in part on keeping the trust of first lady Hillary Rodham Clinton, who called him at home the evening Clinton announced he would succeed McCurry.

"She (offered) very warm congratulations and a very strong statement that she was directly accessible to me and she looked forward to working together," Lockhart recalled.

Marsha Berry, Mrs. Clinton's press secretary, said her boss had no hand in Lockhart's selection.

"But I know she's glad he's the one," she said.

Lockhart himself had some doubt after he and the rest of the country heard Clinton admit on national television Aug. 17 that he had been lying about an affair with Ms. Lewinsky. During a moment alone with the president during the Russia-Ireland trip in early September, Lockhart raised the matter.

"I got the sense that the president recognized the mistake he made," Lockhart said. "I, for one, don't need more than that."

Lockhart has had to deal with his share of political failure. During a decade in which Republicans had a lock on the White House, Lockhart in the 1980s was on the losing end of Democratic presidential campaigns three times Jimmy Carter in 1980, Walter Mondale in 1984 and Michael Dukakis in 1988.

He grew up in the New York City suburb of Suffern, N.Y., the son of journalists. Not far out of his teens he felt the tug of politics and campaign work. He snagged a spot on the Carter re-election campaign in 1980, and then moved back and forth between politics, television journalism and corporate public relations before McCurry persuaded him to take the job of chief spokesman for the 1996 Clinton-Gore campaign.

LANGUAGE: ENGLISH

AP Online, September 30, 1998

LOAD-DATE: September 30, 1998

LEVEL 1 - 26 OF 166 STORIES

The Associated Press

The materials in the AP file were compiled by The Associated Press. These materials may not be republished without the express written consent of The Associated Press.

September 30, 1998, Wednesday, AM cycle

SECTION: Washington Dateline

LENGTH: 808 words

HEADLINE: With fear, fascination, Lockhart takes press secretary role

BYLINE: ROBERT BURNS, Associated Press Writer

DATELINE: WASHINGTON

BODY:

Midway through a European tour, President Clinton and his entourage were winging their way to Belfast, Northern Ireland. Word got out that the president's press secretary-in-waiting, Joe Lockhart, had overslept in Moscow and missed Air Force One.

Not content to take the needling and let it drop, Lockhart - once he had caught up with the presidential party - raised a few eyebrows by jokingly borrowing words from Clinton, whose admission of having lied about Monica Lewinsky was hanging like a cloud over the trip.

"I take responsibility for my own actions," Lockhart deadpanned to reporters. "I deeply regret it. I'm dealing with the people I have hurt the most. And I'll have nothing further to say."

Classic Lockhart. Humility with humor, not afraid to deliver a poke in the presidential ribs.

"It just struck me that everybody needed to lighten up a little bit," Lockhart recalled of that difficult day in the Clinton camp. "If I could make a joke at my expense - even a little bit at the president's expense - and it would lighten the mood and loosen people up," then it was worth trying.

Lockhart figures to have plenty more chances to put his wit to use in a White House under siege. After a year and a half as a deputy to the widely admired Mike McCurry, Lockhart takes over as top spokesman Monday with just over two years left in Clinton's term.

He approaches the new assignment with a mixture of fear and fascination.

The Associated Press, September 30, 1998

"You'd be a fool not to be daunted and intimidated by this task," he said in a recent interview in the high-ceilinged West Wing office that is the Grand Central Station of presidential public relations. "It is a complex mix of emotions. I'm serious when I say daunted and intimidated. But I'm also incredibly excited."

Colleagues inside the White House seem pleased, too.

"He's smart and he has an understanding of the issues," said Elena Kagan, deputy chief for domestic policy. "People feel he has earned it and the president absolutely made the right decision."

Lockhart, 39, is a stocky man with salt-and-pepper hair and a ready smile. A gifted gabber, quick with a quip, he also is known for flashes of temper. He can be easy going, but also boldly political.

The press secretary's most visible role is conducting the daily briefing for White House reporters, an exercise in verbal gymnastics in which one slip of the tongue can carry a heavy penalty.

When Clinton stole into the White House briefing room July 23 to spring the announcement that McCurry was leaving and Lockhart was taking over, he said Lockhart knows what it will take to succeed.

"Joe knows that he can only serve my interests well if he takes care of yours also," Clinton told reporters.

Behind the scenes, the press secretary also must juggle internal White House pressures - don't say too much, don't say too little, keep this secret, leak that secret, humor the press, challenge the press. And because the press secretary speaks not just for the president but for his entire administration, Lockhart must be prepared to handle issues ranging from AIDS policy to foreign policy.

"It's the biggest professional challenge I will face in my lifetime," Lockhart says.

He knows his chances of succeeding will depend in part on keeping the trust of first lady Hillary Rodham Clinton, who called him at home the evening Clinton announced he would succeed McCurry.

"She (offered) very warm congratulations and a very strong statement that she was directly accessible to me and she looked forward to working together," Lockhart recalled.

Marsha Berry, Mrs. Clinton's press secretary, said her boss had no hand in Lockhart's selection.

"But I know she's glad he's the one," she said.

Lockhart himself had some doubt after he and the rest of the country heard Clinton admit on national television Aug. 17 that he had been lying about an affair with Ms. Lewinsky. During a moment alone with the president during the Russia-Ireland trip in early September, Lockhart raised the matter.

The Associated Press, September 30, 1998

"I got the sense that the president recognized the mistake he made," Lockhart said. "I, for one, don't need more than that."

Lockhart has had to deal with his share of political failure. During a decade in which Republicans had a lock on the White House, Lockhart in the 1980s was on the losing end of Democratic presidential campaigns three times - Jimmy Carter in 1980, Walter Mondale in 1984 and Michael Dukakis in 1988.

He grew up in the New York City suburb of Suffern, N.Y., the son of journalists. Not far out of his teens he felt the tug of politics and campaign work. He snagged a spot on the Carter re-election campaign in 1980, and then moved back and forth between politics, television journalism and corporate public relations before McCurry persuaded him to take the job of chief spokesman for the 1996 Clinton-Gore campaign.

LANGUAGE: ENGLISH

LOAD-DATE: September 30, 1998

LEVEL 1 - 27 OF 166 STORIES

Copyright 1998 Times Mirror Company  
Los Angeles Times

August 15, 1998, Saturday, Home Edition

SECTION: Part A; Page 1; National Desk

LENGTH: 1510 words

HEADLINE: COURT RULES FDA CANNOT REGULATE TOBACCO AS DRUG;  
LAW: APPEALS PANEL'S DECISION DEALS KEY BLOW TO CLINTON ADMINISTRATION'S FIGHT  
TO CURB YOUTH SMOKING. JUDGES SAY CONGRESS NEVER GAVE THE AGENCY JURISDICTION.

BYLINE: ALISSA J. RUBIN, TIMES STAFF WRITER

DATELINE: WASHINGTON

BODY:

A federal appeals court dealt a crushing blow Friday to the Food and Drug Administration, ruling that it has no authority to regulate nicotine as a drug and cigarettes as drug-delivery devices.

The 2-1 ruling by a three-judge panel of the U.S. 4th Circuit Court of Appeals, which reversed a lower court decision, represents a major setback for the administration's efforts to restrict tobacco use by children.

"We do not dispute that Congress has charged the FDA with protecting the public health and that tobacco products present serious health risks for the public," wrote Judges H. Emory Widener and James Michael.

Los Angeles Times August 15, 1998, Saturday,

However, they added, "based on our review of the record, the FDA lacks jurisdiction to regulate tobacco products and all of the FDA's regulation of tobacco products are invalid."

The ruling dealt another setback to high-profile efforts by the Clinton administration to curb teen smoking. In June, Congress defeated sweeping legislation that would have regulated the tobacco industry, raised the price of cigarettes and undertaken a comprehensive public health campaign to stop children from smoking.

But the administration said that it would ask for a rehearing of the case before the full 4th Circuit Court in Richmond, Va.

"Our commitment for this issue is for the long term," said Elena Kagan, deputy domestic policy advisor to President Clinton.

"We will take however long it takes us in the courtroom, however long it takes us in Congress. We will continue to fight for the measures that reduce youth smoking," Kagan said.

The voluminous FDA regulation overturned by the court required people under age 27 to present photo identification when buying cigarettes and prohibited the sale of cigarettes to anyone under 18. The rule also called for a ban on cigarette vending machines, except in places such as bars, and broad restrictions on tobacco advertising and promotion.

Despite Friday's ruling, the limits on youth access to tobacco will remain in effect at least through the administration's appeal to the full circuit court. Other restrictions had not yet been implemented.

The tobacco industry applauded the ruling.

"We are pleased by the court's ruling that the FDA does not have authority to regulate tobacco products and that the agency's 1996 tobacco rule is invalid," said Scott Williams, a spokesman for the five major tobacco manufacturers.

But anti-smoking advocates in Congress and the public health community said that the decision would inspire them to new efforts.

"The appeals court decision today makes it even more imperative that Congress pass comprehensive legislation to address the problem of youth tobacco use and addiction," said Sen. John McCain (R-Ariz.), who led the Senate effort to pass comprehensive tobacco legislation.

The FDA rule, announced in August 1996, was the first major attempt by the federal government to regulate tobacco and was promoted primarily as a measure to reduce youth smoking. Three thousand children begin smoking every day and about one-third of them die prematurely of tobacco-related diseases.

The regulation was heralded by Clinton as "historic action" that would "put Joe Camel and the Marlboro Man out of our children's reach forever." Clinton had hoped that strict tobacco controls aimed at children would be a major part of his presidential legacy.

Los Angeles Times August 15, 1998, Saturday,

Last year, when a federal judge upheld the crucial part of the rule granting the FDA authority to regulate tobacco products as a drug, opponents of the industry viewed it as a landmark decision and a major victory for public health.

Now the issue is likely to be fought for years in the courts and, barring a reversal by the full Appeals Court or the Supreme Court, none of the restrictions will remain in effect.

\*

That would force the FDA to go back to Congress for legislation authorizing it to regulate tobacco. Such provisions were included in the massive tobacco bill that was killed by the Senate in June. An aggressive lobbying campaign by the tobacco industry and reluctance by public health groups to compromise on key provisions, such as capping the industry's liability in future lawsuits, contributed to the bill's demise.

Friday's ruling continued a winning streak for the tobacco industry, which has seen a dramatic reversal of its fortunes since just a year ago, when it faced massive lawsuits by the states and an unfriendly Congress.

All that has changed in recent months. Three weeks ago, the industry scored its biggest success yet in the numerous lawsuits filed by states to recover their tobacco-related health care costs. A judge in Indiana threw out that state's case in its entirety.

Cigarette manufacturers also recently won dismissal of several class-action suits filed on behalf of tens of thousands of allegedly addicted smokers in several states as well as by labor union health care funds that have sought reimbursement for the costs of treating sick smokers.

But the industry's most stunning victory was the complete collapse of legislation in Congress to regulate tobacco and limit its use by children.

Anti-smoking advocates lamented Friday's ruling. "Today's decision is a victory for Big Tobacco's lawyers over America's families and their children," said William D. Novelli, president of the Campaign for Tobacco-Free Kids.

"We are deeply disappointed with today's decision. We believe that FDA's oversight is critical to protecting the American public, and especially children, from tobacco products," Novelli said. "We expect this ruling to be appealed and overturned."

\*

Yet the cigarette manufacturers' victories effectively strengthen their hand in their dealings with the states, which are trying to negotiate a similar but more limited settlement than the one proposed a year ago. It would also likely mean a smaller payout by the cigarette industry.

Los Angeles Times August 15, 1998, Saturday,

With the FDA's marketing and advertising regulations in limbo as a result of Friday's ruling, any marketing curbs to which industry agrees would be purely a concession.

"The tide has turned and this strengthens the industry's hand," said Gary Black, a tobacco analyst with Sanford Bernstein & Co., a Wall Street investment firm.

The decision's effect on Congress is more difficult to assess. In the nearly 35 years since the surgeon general's report found that cigarette smoking is a health hazard, Congress has imposed almost no tough regulation on the tobacco industry. The single exception was the smoking ban on airline flights--which benefited members of Congress, who are frequent fliers.

"This has got to be a wake-up call for the public health community and the Clinton administration," said Black. "Congress said no to passing tough tobacco regulations, the courts said no. So they have one more shot at this and it's through the settlement with the attorneys general."

But the prospects for compromise are dim at best. The public health community remains adamantly opposed to accepting less than a comprehensive regulatory bill that forces the industry to pay hundreds of billions of dollars and submit to stringent marketing and advertising limits.

"I don't think the public health forces will be very moved by this to compromise. And given that it doesn't soften people, it's not likely to prompt legislation," said Richard Daynard, a law professor at Northeastern University and head of the Tobacco Products Liability Project.

Still, some analysts predict that court action might force a reevaluation of the need to take up comprehensive tobacco legislation next year. There is virtually no time left this year for Congress to revive a measure as complex as the tobacco bill.

"If this was the final decision, it would give the industry tremendous negotiating leverage," conceded Daynard. "But it's not and nobody thinks it is. This is simply a way station to the Supreme Court."

Indeed, many legal analysts said that the court's decision did not take into account the massive record that the FDA built on the deleterious health effects of tobacco.

"I am confident . . . that the Department of Justice will vigorously appeal this case," said Walter Dellinger, the former solicitor general and now a law professor at Duke University.

\*

Indeed, the dissenting opinion by the court emphasized that the FDA had attempted to take into account a growing body of evidence about the dangers of smoking and as the only regulatory public health agency with authority to regulate drugs, to keep the public as safe as possible.

Los Angeles Times August 15, 1998, Saturday,

"After years of considering an array of evidence, much of it only recently brought to light, the FDA decided to regulate a product that is estimated to cause some 400,000 deaths a year," wrote Judge Hall in his dissent.

"Inasmuch as cigarettes and smokeless tobacco are responsible for illness and death on a vast scale, FDA regulations aimed at curbing tobacco use by children cannot possibly be contrary to the general intent of the Food Drug and Cosmetic Act to protect the public health," he said.

LANGUAGE: English

LOAD-DATE: August 15, 1998

LEVEL 1 - 28 OF 166 STORIES

Copyright 1998 Newsday, Inc.  
Newsday (New York, NY)

August 15, 1998, Saturday, NASSAU AND SUFFOLK EDITION

SECTION: NEWS; Page A06

LENGTH: 607 words

HEADLINE: BIG TOBACCO'S VICTORY / APPEALS COURT BARS FDA REGULATION

BYLINE: By Harry Berkowitz. STAFF WRITER

BODY:

A federal appeals court panel on Friday rejected the White House's attempt to use the Food and Drug Administration to crack down on teen smoking, ruling that Congress never gave the agency authority to regulate tobacco and cigarettes.

The ruling was a major victory for the tobacco industry, which has long fought FDA regulation, saying it could lead to a ban on nicotine and cigarettes. It was a major setback for President Bill Clinton, public health advocates, state attorneys general and members of Congress who have pushed for such FDA authority.

"The leverage now seems to be moving in the direction of the tobacco industry, and I'm sure they are very emboldened today," said Michael Moore, the Mississippi attorney general who led dozens of states in negotiating a \$368.5-billion lawsuit settlement in June, 1997 with the tobacco industry that included FDA regulation. After making that settlement tougher against the industry and losing the industry's support, the Senate two months ago killed a bill that was needed to turn the deal into federal law.

"I hope this is a wakeup call for many in the country who were trying to get a perfect deal, which was the enemy of a good enough deal," Moore said.

Several attorneys general are trying to negotiate a new deal that would not require congressional approval. But that settlement would not include FDA regulation, although it might incorporate some proposed FDA rules, such as a



Newsday (New York, NY), August 15, 1998

ban on cigarette billboards.

By a vote of 2-1, the panel of the Fourth U.S. Circuit Court of Appeals in Richmond, Va., reversed a ruling by U.S. District Court Judge William Osteen in Winston-Salem, N.C., that the FDA could regulate tobacco. It did not reverse the other part of Osteen's decision, which said the FDA could not oversee tobacco advertising.

The industry had appealed one part of Osteen's ruling, and the government had appealed the other.

"This is not a case about whether additional or different regulations are needed to address legitimate concerns about the serious health problems related to tobacco use and particularly youth tobacco use in this country," U.S. Circuit Court Judge H. Emory Widener wrote in his majority opinion. He said it is about who has the power to impose those regulations, and "Congress did not intend to delegate jurisdiction over tobacco products to the FDA."

He wrote that it would not make sense for the FDA, which adopted strict rules over tobacco marketing in 1996, to regulate nicotine or cigarettes as a drug under existing law because the agency says they are "unsafe" products. "It is impossible to create regulations which will provide a reasonable assurance of safety," Widener wrote.

The Justice Department said it will ask the full 14-member appeals court to review the decision, which eventually may reach the Supreme Court.

"This decision is further evidence that Congress needs to move forward with the kind of reform on tobacco that is long overdue," said Attorney General Christine Gregoire of Washington state.

"We've always thought that the best way to . . . reduce youth smoking is through congressional action," said Elena Kagan, a White House adviser on tobacco.

But the Republican leadership in the House of Representatives, which had promised to introduce a new slimmed-down tobacco bill, has decided to hold off in the face of resistance from Republican members who say they don't want to stir up the issue again.

In a statement, major tobacco companies said they were pleased by the ruling and that "the industry remains firmly committed to taking meaningful steps to reduce underage tobacco use."

LANGUAGE: English

LOAD-DATE: August 15, 1998

LEVEL 1 - 29 OF 166 STORIES

Copyright 1998 The Washington Post  
The Washington Post

The Washington Post, July 06, 1998

July 06, 1998, Monday, Final Edition

SECTION: A SECTION; Pg. A17; THE FEDERAL PAGE; IN THE LOOP

LENGTH: 888 words

HEADLINE: Personless Home

BYLINE: Al Kamen

BODY:

There are many grand U.S. embassies around the world, including those in London, Paris and Prague. But the splendid ambassador's residence in Buenos Aires, just having undergone a major refurbishing completed this month, is said to be the grandest of all.

And yet, the Clinton administration has been having trouble finding someone to fill it. In fact, the palatial residence has been vacant since December 1996, when Clinton pal James Cheek left. Since then, the administration has drifted from one possible candidate to another, but has yet to nominate anyone.

President Clinton wanted to send either former Houston mayor Bob Lanier or Nevada Gov. Robert J. Miller (D). Lanier didn't want to go to Argentina and Miller, after seeing how many people came out urging him to stay in Nevada, also turned it down.

So then the attention shifted to New York, where Iranian American businessman Hassan Nemazee was leading the pack for a while. Then attention drifted to Marife Hernandez, a longtime party contributor and activist in New York City. Now there's talk of sending Democratic contributor Jeffrey Hirschberg, who's vice chairman of government relations for the Washington office of mega-accounting firm Ernst & Young.

But even if a tentative pick is made soon, by the time background checks are completed and the papers get to the Senate, there probably will be no time for confirmation this year. So the residence will be vacant until early 1999 at the earliest, a total of more than two years.

A little further north, veteran diplomat Melvyn Levitsky, ambassador to Brazil and former assistant secretary of state for drug enforcement, is calling it quits after 35 years in the Foreign Service to be a professor of international relations at Syracuse University. Levitsky is taking off in a couple of weeks and there's no successor in sight.

At least there was a selection made last summer of Houston lawyer and contributor H. Lee Godfrey for the post, but Godfrey, apparently frustrated by the system, withdrew his name from consideration before it got to the Senate. The State Department is pushing to have a career person take the job -- which would most likely mean the post could be filled faster -- but so far no one has been selected. At this point, unless someone incredibly wired to the Republicans is nominated, look for Brazil also to be empty well into 1999.

It can't get more pathetic than this.

The Washington Post, July 06, 1998

### Latin Leaver

Meanwhile, folks south of the border, including our own diplomats, are upset that the White House Office of the Special Envoy for the Americas is closing up as Thomas F. "Mack" McLarty III heads home to Arkansas and his staff scatters. The Latin Americans had gotten a bit having someone they could call who was so close to the president.

Now, as one White House aide put it, "they'll think we don't care about them anymore."

How could they possibly think that?

### The Last 2 Reasons (and a Bonus)

And now, more from outgoing White House deputy chief of staff Sylvia Mathews's list of "Top Ten Reasons why the White House is a better place to work than OMB," the Office of Management and Budget, where she's to be deputy director.

We had eight "reasons" in Wednesday's column and asked readers if anyone knew the other two. A caller from China gave us one: "You have the privilege of hearing [counselor] Rahm [Emanuel] say 10 times a day: 'Well, Elena better come up with some policy!' " [That's Elena Kagan, deputy director of the Domestic Policy Council and regarded by some as the smartest person in the White House.]

The 10th reason, supplied by another Loop fan -- who helpfully included a copy of Mathews's handwritten list -- was: "You don't get lured into tedious jobs with no responsibility and great titles like 'counselor to the president.' "

Mathews's exact line, paraphrased in The Loop on Wednesday, about Chief of Staff Erskine B. Bowles's thinning hair was: "If Erskine keeps up his treatments, he will have as much hair as Jack [Jacob J. Lew, the OMB director, who's got plenty of hair]."

But perhaps the best "reason" of all, one that Mathews didn't use, was originally No. 4: "Never a waiting line at the women's bathroom in the West Wing." The reason being there are so few women working in the top jobs in the White House.

### According to Plan

So there was Vice President Gore last week down in Florida surveying the damage caused by out-of-control fires. Let's see, now. Would this be in accordance with the U.S. Forest Service "media plan" for July 1 to Sept. 1 to highlight efforts at "wildfire suppression [and] water quality" and "tie with the vice president's Clean Water Initiative"?

### Poll Watcher

Stephen Gaskill, Tipper Gore's '92 campaign press secretary in Little Rock and more recently communications director of the Occupational Safety and Health Administration, is taking off today to be New York senatorial candidate Geraldine A. Ferraro's campaign communications director and spokesman in the

The Washington Post, July 06, 1998

primary brawl and then, if the polls prove out, to take on Sen. Alfonse M. D'Amato (R).

On the Hill, Eric Scheinkopf, who had been legislative assistant to Sen. Olympia J. Snowe (R-Maine) and before that for Sen. Daniel K. Inouye (D-Hawaii), has become public policy coordinator at the Population Institute.

LANGUAGE: ENGLISH

LOAD-DATE: July 06, 1998

LEVEL 1 - 30 OF 166 STORIES

Copyright 1998 Chicago Sun-Times, Inc.  
Chicago Sun-Times

June 24, 1998, WEDNESDAY, Late Sports Final Edition

SECTION: NWS; NEWS ANALYSIS; Pg. 6

LENGTH: 244 words

HEADLINE: White House maintains strong Chicago ties

BYLINE: Lynn Sweet

DATELINE: WASHINGTON

BODY:

Throughout President Clinton's first and second terms, the Chicago area has fared well when it comes to high-level appointments in the White House, even with some turnover.

Senior presidential adviser Rahm Emanuel, a Wilmette native, is one of about seven people remaining in the White House who have been working steadily for Clinton since the first presidential campaign in Little Rock, Ark. Patty Solis-Doyle, the scheduling director for first lady Hillary Rodham Clinton (and sister of 25th Ward Ald. Danny Solis), also has been with Clinton since his first-term campaign.

Deputy Chief of Staff John Podesta grew up near Lawrence and Elston. Communications adviser Sidney Blumenthal lived in West Rogers Park. Incoming public liaison director Minyon Moore is from 78th and Honore.

Todd Stern, assistant to the president for special projects, grew up in Glencoe; his family owns a piece of the Chicago Bulls.

Chicagoans figure heavily in domestic policy development. Mary Smith, associate director of policy planning, graduated from the University of Chicago Law School, where Elena Kagan, deputy director of the Domestic Policy Council, taught before going to the White House. Jose Cerda, special assistant to the president for domestic policy, grew up in Back of the Yards.

Chicago Sun-Times, June 24, 1998

Thomas Freedman, senior director for policy planning, also is from the city. Northwestern University economist Rebecca Blank is a member of the Council of Economic Advisors.

GRAPHIC: See also related story.

LANGUAGE: English

LOAD-DATE: July 1, 1998

LEVEL 1 - 31 OF 166 STORIES

Copyright 1998 The Denver Post Corporation  
The Denver Post

June 23, 1998 Tuesday 2D EDITION

SECTION: A SECTION; Pg. A-02

LENGTH: 443 words

HEADLINE: U.S. to survey teen smokers

BYLINE: By Jodi Enda, Knight Ridder News Service

BODY:

WASHINGTON - President Clinton on Monday struck back at tobacco companies for their role in killing anti-smoking legislation by announcing that his administration would survey teenagers on which brands of cigarettes they prefer and why.

The announcement signaled Clinton's resolve to forge ahead in his fight against tobacco companies and the members of Congress who continue to side with them. In stern language, the president portrayed himself as being firmly on the side of families as he took aim at companies that he said target the nation's children.

A survey of teens smoking habits, he said, would demonstrate clearly which advertising strategies worked to entice children and which tobacco companies should be held up to public scrutiny.

"Parents, quite simply, have a right to know," Clinton said at the White House. "Once this information becomes public, companies will then no longer be able to evade accountability, and neither will Congress. From now on, the new data will help to hold tobacco companies accountable for targeting children."

The tobacco industry dismissed the plan as a political ploy that would do nothing to further the fight against teen smoking.

Clinton directed the Department of Health and Human Services to add questions about smoking to an annual drug-abuse survey that it has conducted since the 1970s.

While he held out hope Congress still would pass comprehensive tobacco-control legislation, Clinton said the survey would be useful in any

The Denver Post, June 23, 1998 Tuesday

event, if only as a tool to single out tobacco companies that appeal to teenagers.

A survey showing that teenagers overwhelmingly favor particular brands of cigarettes "will clearly demonstrate that there is something in the nature of the advertising that has something to do with this," Clinton said.

"There's a huge value in just knowing who are the bad apples and holding them to account in the court of public opinion," added Elena Kagan, deputy director of Clinton's Domestic Policy Council.

Tobacco-industry spokesman Lance Morgan responded by saying that "the president's plan contributes to the blame game but not to the effort to reduce youth smoking. ... I don't think this takes us very far. What brands youth smoke is not as important as why and what can and should be done about it."

Speaking five days after tobacco-control legislation died in the Senate, Clinton said he would continue to push for its passage and to fight any attempt to enact a "watered-down bill written by the tobacco lobby." The bill backed by Clinton died Wednesday after Senate sponsors fell short of the 60 necessary to put the measure before the chamber for passage.

LOAD-DATE: June 23, 1998

LEVEL 1 - 32 OF 166 STORIES

Copyright 1998 Southam Inc.  
The Gazette (Montreal)

June 23, 1998, Tuesday, FINAL EDITION

SECTION: NEWS; Pg. C8

LENGTH: 699 words

HEADLINE: Clinton takes new swipe at tobacco: Youth to be surveyed on cigarette brands

BYLINE: JODI ENDA; KNIGHT RIDDER NEWSPAPERS

DATELINE: WASHINGTON

BODY:

President Bill Clinton yesterday struck back at tobacco companies for their role in killing anti-smoking legislation by announcing that his administration will survey teenagers on which brands of cigarettes they prefer and why.

The announcement signaled Clinton's resolve to forge ahead in his fight against tobacco companies and the members of Congress who continue to side with them. In stern language, the president portrayed himself as being firmly on the side of families as he took aim at companies that he said target the nation's children.

A survey of teens' smoking habits, he said, would demonstrate clearly which advertising strategies worked to entice children and which tobacco companies

The Gazette (Montreal), June 23, 1998

should be held up to public scrutiny.

"Parents, quite simply, have a right to know," Clinton said at the White House. "Once this information becomes public, companies will then no longer be able to evade accountability, and neither will Congress. From now on, the new data will help to hold tobacco companies accountable for targeting children."

The tobacco industry dismissed the plan as a political ploy that would do nothing to further the fight against teen smoking.

#### A Useful Tool

Clinton directed the Department of Health and Human Services to add questions about smoking to an annual drug-abuse survey that it has conducted since the 1970s.

While he held out hope Congress still will pass comprehensive tobacco-control legislation, Clinton said the survey would be useful in any event, if only as a tool to single out tobacco companies that appeal to teenagers.

A survey that shows teenagers overwhelmingly favour particular brands of cigarettes "will clearly demonstrate that there is something in the nature of the advertising that has something to do with this," Clinton said.

"There's a huge value in just knowing who are the bad apples and holding them to account in the court of public opinion," added Elena Kagan, deputy director of Clinton's Domestic Policy Council.

Tobacco-industry spokesman Lance Morgan responded by saying that "the president's plan contributes to the blame game but not to the effort to reduce youth smoking. ... I don't think this takes us very far. What brands youth smoke is not as important as why and what can and should be done about it."

#### Politics Over People

Speaking five days after tobacco-control legislation died in the Senate, Clinton said he would continue to push for its passage and to fight any attempt to enact a "watered-down bill written by the tobacco lobby." The bill backed by Clinton died last Wednesday after Senate sponsors fell short of the 60 necessary to put the measure before the chamber for passage.

"A majority of the Senate now stands ready to join us, but last week the Republican leadership placed partisan politics and tobacco companies above our families," Clinton said yesterday. "Their vote was not just pro-tobacco lobby, it was anti-family."

Later, in Nashville for a family conference sponsored by Vice-President Al Gore, Clinton added: "It was a brazen act of putting politics over people and partisanship over progress."

The bill died after the tobacco industry spent an estimated \$ 40 million on an advertising campaign that depicted it as a massive tax hike that would benefit lawyers. The bill, which would have raised the price of a pack of cigarettes by \$ 1.10 over five years, was expected to cost the industry \$ 516 billion. The bill also carried hefty financial penalties for companies that

The Gazette (Montreal), June 23, 1998

failed to meet set reductions in teen smoking.

Although House Speaker Newt Gingrich has said he will put forth a new bill, White House officials say they expect it to be too weak to accomplish their major goal - a significant reduction in youth smoking.

Kagan said that the White House intends to continue to press for three senators to change their votes, giving sponsors of the existing bill the support necessary to end debate and put it to a vote. "We just need to keep the pressure on," she said. "We have three votes to change in the Senate and we're going to try to change those votes and make three senators realize that they made a fundamental mistake."

LANGUAGE: ENGLISH

LOAD-DATE: June 24, 1998

LEVEL 1 - 33 OF 166 STORIES

Copyright 1998 The Pantagraph  
THE PANTAGRAPH (Bloomington, IL.)

June 23, 1998, Tuesday

SECTION: News; Pg. A1

LENGTH: 667 words

HEADLINE: Clinton planning survey of teen smoking

BYLINE: Knight Ridder Newspapers

DATELINE: WASHINGTON, D.C.

BODY:

WASHINGTON, D.C. - President Clinton on Monday struck back at tobacco companies for their role in killing anti-smoking legislation by announcing that his administration would survey teen-agers on which brands of cigarettes they prefer and why.

The announcement signaled Clinton's resolve to forge ahead in his fight against tobacco companies and the members of Congress who continue to side with them. In stern language, the president portrayed himself as being firmly on the side of families as he took aim at companies that he said target the nation's children.

A survey of teens' smoking habits, he said, would demonstrate clearly which advertising strategies worked to entice children and which tobacco companies should be held up to public scrutiny.

"Parents, quite simply, have a right to know," Clinton said at the White House. "Once this information becomes public, companies will then no longer be able to evade accountability, and neither will Congress. From now on, the new



THE PANTAGRAPH (Bloomington, IL.) June 23, 1998, Tuesday

data will help to hold tobacco companies accountable for targeting children."

The tobacco industry dismissed the plan as a political ploy that would do nothing to further the fight against teen smoking.

Clinton directed the Department of Health and Human Services to add questions about smoking to an annual drug-abuse survey that it has conducted since the 1970s.

While he held out hope Congress still would pass comprehensive tobacco-control legislation, Clinton said the survey would be useful in any event, if only as a tool to single out tobacco companies that appeal to teen-agers.

A survey that shows that teen-agers overwhelmingly favor particular brands of cigarettes "will clearly demonstrate that there is something in the nature of the advertising that has something to do with this," Clinton said.

"There's a huge value in just knowing who are the bad apples and holding them to account in the court of public opinion," added Elena Kagan, deputy director of Clinton's Domestic Policy Council.

Tobacco-industry spokesman Lance Morgan responded by saying that "the president's plan contributes to the blame game but not to the effort to reduce youth smoking. ... I don't think this takes us very far. What brands youth smoke is not as important as why and what can and should be done about it."

Speaking five days after tobacco-control legislation died in the Senate, Clinton said he would continue to push for its passage and to fight any attempt to enact a "watered-down bill written by the tobacco lobby." The bill backed by Clinton died last Wednesday after Senate sponsors fell short of the 60 necessary to put the measure before the chamber for passage.

(EDITORS: BEGIN OPTIONAL TRIM)

"A majority of the Senate now stands ready to join us, but last week the Republican leadership placed partisan politics and tobacco companies above our families," Clinton said Monday. "Their vote was not just pro-tobacco lobby, it was anti-family."

(END OPTIONAL TRIM)

Later, in Nashville for a family conference sponsored by Vice President Gore, Clinton added, "It was a brazen act of putting politics over people and partisanship over progress."

The bill died after the tobacco industry spent an estimated \$ 40 million on an advertising campaign that depicted it as a massive tax hike that would benefit lawyers. The bill, which would have raised the price of a pack of cigarettes by \$ 1.10 over five years, was expected to cost the industry \$ 516 billion. The bill also carried hefty financial penalties for companies that failed to meet set reductions in teen smoking.

Although House Speaker Newt Gingrich, R-Ga., has said he will put forth a new bill, White House officials say they expect it to be too weak to accomplish

THE PANTAGRAPH (Bloomington, IL.) June 23, 1998, Tuesday

their major goal - a significant reduction in youth smoking.

Kagan said that the White House intended to continue to press for three senators to change their votes, giving sponsors of the existing bill the support necessary to end debate and put it to a vote.

LANGUAGE: ENGLISH

LOAD-DATE: August 14, 1998

LEVEL 1 - 34 OF 166 STORIES

Copyright 1998 The Hearst Corporation  
The Times Union (Albany, NY)

June 23, 1998, Tuesday, THREE STAR EDITION

SECTION: MAIN, Pg. A3

LENGTH: 563 words

HEADLINE: Clinton seeks tobacco survey

BYLINE: JODI ENDA; Knight Ridder

HIGHLIGHT:

President's plan to poll teens a response to endangered anti-smoking legislation

BODY:

WASHINGTON -- President Clinton on Monday struck back at tobacco companies for their role in weakening anti-smoking legislation by announcing that his administration would survey teenagers on which brands of cigarettes they prefer and why.

The announcement signaled Clinton's resolve to forge ahead in his fight against tobacco companies and the members of Congress who continue to side with them. In stern language, the President portrayed himself as being firmly on the side of families as he took aim at companies that he said target the nation's children.

A survey of teens' smoking habits, he said, would demonstrate clearly which advertising strategies worked to entice children and which tobacco companies should be held up to public scrutiny.

"Parents, quite simply, have a right to know," Clinton said at the White House. "Once this information becomes public, companies will then no longer be able to evade accountability, and neither will Congress. From now on, the new data will help to hold tobacco companies accountable for targeting children."

The tobacco industry dismissed the plan as a political ploy that would do nothing to further the fight against teen smoking.

The Times Union, June 23, 1998

Clinton directed the Department of Health and Human Services to add questions about smoking to an annual drug-abuse survey that it has conducted since the 1970s.

While he held out hope Congress still would pass comprehensive tobacco-control legislation, Clinton said the survey would be useful in any event, if only as a tool to single out tobacco companies that appeal to teenagers.

A survey that shows that teenagers overwhelmingly favor particular brands of cigarettes "will clearly demonstrate that there is something in the nature of the advertising that has something to do with this," Clinton said.

"There's a huge value in just knowing who are the bad apples and holding them to account in the court of public opinion," added Elena Kagan, deputy director of Clinton's Domestic Policy Council.

Tobacco-industry spokesman Lance Morgan responded by saying that "the President's plan contributes to the blame game but not to the effort to reduce youth smoking. . . . I don't think this takes us very far. What brands youth smoke is not as important as why and what can and should be done about it."

Speaking five days after tobacco-control legislation died in the Senate, Clinton said he would continue to push for its passage and to fight any attempt to enact a "watered-down bill written by the tobacco lobby." The bill backed by Clinton died last Wednesday after Senate sponsors fell short of the 60 necessary to put the measure before the chamber for passage.

"A majority of the Senate now stands ready to join us, but last week the Republican leadership placed partisan politics and tobacco companies above our families," Clinton said Monday. "Their vote was not just pro-tobacco lobby, it was anti-family."

The bill died after the tobacco industry spent an estimated \$ 40 million on an advertising campaign that depicted it as a massive tax hike that would benefit lawyers. The bill, which would have raised the price of a pack of cigarettes by \$ 1.10 over five years, was expected to cost the industry \$ 516 billion. The bill also carried hefty financial penalties for companies that failed to meet set reductions in teen smoking.

LOAD-DATE: June 24, 1998

LEVEL 1 - 35 OF 166 STORIES

Copyright 1998 U.S. Newswire, Inc.  
U.S. Newswire

May 27, 1998 9:59 Eastern Time

SECTION: NATIONAL DESK

LENGTH: 1660 words

U.S. Newswire, May 27, 1998

HEADLINE: Transcript of White House Briefing by Shalala, Segal, Kagan (1/2)

CONTACT: White House Press Office, 202-456-2100

DATELINE: WASHINGTON, May 27

## BODY:

Following is a transcript of remarks by Secretary of Health and Human Services Donna Shalala, CEO and President of the Welfare-to-Work Partnership Eli Segal, and Deputy Assistant to the President for Domestic Policy Elena Kagan, in a White House press briefing today (1 of 2):

## The Briefing Room

2:10 P.M. EDT

MR. TOIV: Good afternoon. Here to brief today on this wonderful success story are Secretary of Health and Human Services Donna Shalala and Eli Segal, who is president and CEO of the Welfare to Work Partnership. And they will just take your questions.

SECRETARY SHALALA: Welfare works, Sam.

Q I know that Mr. Morris, Dick Morris, told the President he ought to sign that bill, turns out to be right. Is that your view?

SECRETARY SHALALA: The President made his decision. He believed that welfare could work in this country, and it's working.

Q You were against it, weren't you, in the good old days?

SECRETARY SHALALA: I think the President and I agreed on what we needed for welfare reform and we got it. We restored a number of the cuts that were made in that welfare bill the President said he wanted after the election. But the most important message today that millions of people are moving off welfare. We have the lowest rates we've had since 1969. And the message from the private sector today is that people not only are taking the jobs, but they're staying in the jobs at higher rates than other employees coming in.

And if you'll remember, at one of the early briefings that I did, I said the test of welfare reform is not whether people leave the welfare rolls, but whether they stay in the jobs. The test is retention. The story today that Eli and his colleagues in the private sector told is a story of retention, of staying in the jobs.

Q Let me try a slightly different take on that question. There were a lot of people within your own agency and certainly within the broader community of social activists who had deep reservation about the welfare reform bill. Does he talk with them now and how much skepticism does there remain? Or do they look at this program and do you sense a reappraising?

SECRETARY SHALALA: As Mary Jo Baine was leaving the Department she said, prove me wrong. We're in the process of doing that.

Q Mr. Segal, if I could just ask about the economy. Boon times, low unemployment, people wanting workers. So when it finds that the business cycle has not been repealed and we go into a recession, what happens to all these people?

U.S. Newswire, May 27, 1998

MR. SEGAL: Sam, essentially we believe in the United States we have two unemployment systems: one, the chronologically long-term unemployed -- those are the people we say are in the welfare system; the other unemployment system, the people like us, our families, our friends, who are down on their luck, the company closes, the industry changes a little bit, lose their jobs -- they go into the unemployment compensation.

It's no question but that there are a lot of people who are the last hired/first fired, are going to lose their jobs if and when the economy turns south. But they would have been involved in productive labor. It's the reason why we say at the Welfare to Work Partnership every day, we're in a dash -- not in a marathon -- to move as many people as quickly as we can into work, into productive work. If in fact the economy turns bad, they and many other people may well lose their jobs.

One of the other messages of today -- but in short, they may lose their jobs, but they would have been involved in work and they're much more likely to get back up on their feet having an attractive track record in the past.

Q Is there still a safety net if they lose their job?

MR. SEGAL: That's something that I think at some point we're going to need to deal with. At least at this point our responsibility is to move people to work. There will be millions and millions of new people -- there are already hundreds of thousands of people working now who were not working only a year or two ago. And I think if the economy stays strong, we will continue to find jobs, and many people making it into the workplace.

SECRETARY SHALALA: There are actually two experiences that people are having that will be very important no matter what happens to the economy. The first one is they got a job and they kept it for a substantial period of time. The second is that they went through a training process. And that's what's going to keep our economy alive -- the training experience, understanding that to take jobs you have to go through a training experience. And it's companies organizing to move people into different slots as they have needs. And the training may turn out to be as significant for the flexibility of this group of people as actually getting in the job and retaining the job.

Q How do you explain the higher retention rates? Is it because of training programs? Is it because these employees have fewer other options available?

SECRETARY SHALALA: It may be a small part of the latter that you mentioned. But I think the first part is that companies are beginning to learn what it takes to retain people. Many of the companies talked to the President today about mentoring as part -- getting people ready for the job, putting them through internships or through training, but then assigning someone that would just be an ear for them, that would help them make the transition into work.

In addition to that, remember that we've also included child care. There is no children's health insurance available. The earned income tax credit becomes a powerful incentive, because work now pays better than welfare did in the past. So the combination of supports -- but the more personalized the system is, the higher the retention. And I think that's what the private sector reported today.

U.S. Newswire, May 27, 1998

Even in my own department, where we've hired 200 welfare recipients, we have substantially changed the employees assistance program that is the support system for all entry, lower-income workers. All of our new workers now have one-stop shopping, a much more supportive human resource operation.

Q You mentioned you've hired 200. Can you update us on how the effort by the federal government as a whole now stands, how many have been hired at the White House also?

SECRETARY SHALALA: Do you want to do that?

MS. KAGAN: We've hired 4,800 as a whole in the federal government -- that's 48 percent of the goal that we set for ourselves of 10,000 by the year 2000. Different departments have different records. Different departments made different pledges, depending upon the character of their work force.

SECRETARY SHALALA: My Department, for instance, has hired two-thirds of our goal already, so we're going to exceed our goal substantially.

MS. KAGAN: Many departments are finding that there are very few departments that are running back of their goal.

Q What about the White House?

MS. KAGAN: The White House has met its goal, exceeded its goal. It had a goal of six, which given the White House's small staff was approximately equivalent to many other agencies' goals. And we have hired seven.

Q Doing what kind of tasks? House people are doing, but ours are mostly entry-level jobs, though a couple of people have gotten promoted pretty quickly into the system as they've learned the job.

MR. SEGAL: You asked about retention. The businesses are saying there are about four reasons they almost all give together.

First, they talk about mentoring or some kind of on-site coaching. Second, they talk about public/private partnerships, the need to do it not by themselves -- something that represents a dramatic change from where they were a year ago. They need help. They need help from government; they need help from nonprofit organizations. The third thing they talk about all the time is the nature of the benefit package they're offering and they have to make it a good benefit package. And fourth, probably most surprising, no compromise with quality. They require and expect those coming off the welfare rolls to be as good employees as any other entry-level employee.

One other thing that was interesting today. You probably have a stereotype of what a welfare to work person is. One of the things we're learning over and over again is these are not always only entry-level people. We're finding in some companies people are moving from welfare to jobs, white-collar jobs sometimes paying as much as \$30,000. And we're finding an incredibly varied experience based simply on the commitment of the company to do things the way they knew best. They know how to solve problems in the shop floor; they know how to solve problems in the office; and now they're knowing how to solve this problem. They're all figuring out a different way to do it.

SECRETARY SHALALA: We also have new statistics on the percentage of people that are leaving welfare who are going into the work force. And the new

U.S. Newswire, May 27, 1998

analysis of the Census Bureau data between 1976 and '77 indicates that 20 percent more actually are moving to work. And remember, people always moved off welfare -- some of them got married, some of them moved back in with their families. But what we're finding is a higher and higher percentage of people are going into jobs, number one. And number two, this discussion today, a higher percentage of them are staying in their jobs.

LANGUAGE: ENGLISH

LOAD-DATE: May 27, 1998

LEVEL 1 - 36 OF 166 STORIES

Copyright 1998 U.S. Newswire, Inc.  
U.S. Newswire

May 27, 1998 9:59 Eastern Time

SECTION: NATIONAL DESK

LENGTH: 1169 words

HEADLINE: Transcript of White House Briefing by Shalala, Segal, Kagan (2/2)

CONTACT: White House Press Office, 202-456-2100

DATELINE: WASHINGTON, May 27

BODY:

Following is a transcript of remarks by Secretary of Health and Human Services Donna Shalala, CEO and President of the Welfare-to-Work Partnership Eli Segal, and Deputy Assistant to the President for Domestic Policy Elena Kagan, in a White House press briefing today (2 of 2):

Q Is there any sense that these companies sort of picked the low-hanging fruit and it's getting harder and harder to find qualified welfare recipients to

SECRETARY SHALALA: Why don't you take a shot at it. I actually think the answer is no.

MR. SEGAL: I think the answer is mixed.

SECRETARY SHALALA: Good controversy.

MR. SEGAL: Some companies, like Cessna, ask no questions about your background -- you want to come to work there, they'll invest in making this work for you. For the most part companies are looking at the most job-ready person first and there's nothing wrong with it. We're happy to debate creaming or skimming, whatever else we call it. Companies need to get their feet on the ground on this, like any other practical problem, let's have some successes.

I think with the passage of time that they've learned a lot more, they're going to go deeper and deeper into the welfare pool with much, much more

U.S. Newswire, May 27, 1998

success because they've seen it work just the way businesses have always done. They've dealt with reality and they've made success and they will go on from there.

So for the most part, I think we are finding the most job-ready people, people that are ready to work today, and if not today, tomorrow. But I do think you're going to see other companies, some of these same companies step it up going forward.

SECRETARY SHALALA: The reason that I was less hesitant about that is because I think the states have sorted out their welfare rolls. Those that were eligible for SSI that were really, truly disabled have been moved to those programs, and I think that the group that's left on welfare -- remember, we're talking about a new group going into welfare over the last year or so in which a larger percentage are going into jobs. So it's harder to make that old argument that we creamed during the first couple of years. So I would suggest to you that the companies are more sophisticated, as Eli has indicated. The government is more sophisticated about support systems. That the states are getting their act together on getting their child care out. We're giving them lots of technical assistance. Children's health insurance will certainly help. The Earned Income Tax Credit will have a great effect.

But people themselves, in their neighborhoods -- the difference between a demonstration program and having everyone in your community having to think now about getting into the work force is that the culture is beginning to change both in the welfare office and in the communities to move more people out and to find appropriate opportunities for people.

MS. KAGAN: If I could just add one thing to that on behalf of Secretary Herman, who isn't here, because the \$3 billion Welfare to Work program is really meant to be geared towards exactly those hardest to employ people that you're talking about. I think the President understood that there was a need for additional funds to go towards those people to make sure that those hardest to employ people also got an entry into the work force. And that the grants that Secretary Herman gave out in the first part of the 25 percent of the program that is in competitive grants, towards agencies mostly community based, that really works with those very difficult to employ people and makes sure that they also get the leg up that they need.

SECRETARY SHALALA: I listened very closely to the private sector leaders today and if they have in their heads from now on that these are better employees, that they're more likely to keep them, which saves them money -- it's always cheaper to keep someone than to go out and hire -- and that as some of them describe it, they're more enthusiastic about working in those places, less cynical.

If that's the attitude they're going into this with, we couldn't be in a better situation at this point in time. And I can't emphasize enough how significant the retention report is today and the fact that more people are going into the job force. Because that was really our test. Our test was never just moving people from welfare to work; it was whether they were going to stick with it in the work force. And we always talked about the first or the second job, because that's what the literature previously told us.

But if there is retention going on now and if the private sector is



U.S. Newswire, May 27, 1998

beginning to see that as significant and economically important to them, then what's going on now is very significant.

Any other questions?

Q We at ABC think this is very important and I will personally brief NBC and CBS and CNN -- (laughter).

MR. SEGAL: Can I make a comment on that? You know, I was last here the day AmeriCorps became the law of the land; there was a similar number of people here. I actually want to say that, at the risk of sounding like a cheerleader or a boosterism, this is a big deal. The policy issues were pretty much decided in August '96. This was turned over to the states, to the people, to the private sector. And it is extraordinary to think that a year ago this was just an idea. Today we have 5,000 companies -- it's not easy to get 5,000 anythings to do something together -- all of whom with a common mission: they all want to hire welfare recipients.

Now, that might not sound very big from a policy perspective, but in terms of changing America, in terms of changing the hiring practice of America, the fact that these companies have put themselves on the line -- some for clearly reasons of charity and being good citizens, but mostly because it's a smart solution for business. I think it is a big deal, and I think we're going to continue to see next year -- 135,000 this year, the President challenged them next year to do twice as many next year. When they do this next year, when we do this next year, and you're going to start talking about the people who move from welfare to work, and you're going to compare it with the size of the welfare rolls a year from now, you're going to see that quietly, in 1996, began a process that ended welfare as we know it.

Now, whether we want to give credit or not give credit, not being the point right now, I think it's a big deal. And whether people --

SECRETARY SHALALA: And the important thing of Eli's companies is three-fourths are small companies, which is where the growth is in the system.

THE PRESS: Thank you.

END

2:24 P.M. EDT

LANGUAGE: ENGLISH

LOAD-DATE: May 27, 1998

LEVEL 1 - 37 OF 166 STORIES

Copyright 1998 Federal Information Systems Corporation  
Federal News Service

MAY 27, 1998, WEDNESDAY

SECTION: WHITE HOUSE BRIEFING

LENGTH: 2703 words

Federal News Service, MAY 27, 1998

HEADLINE: SPECIAL WHITE HOUSE BRIEFING

TOPIC: WELFARE-TO-WORK PARTNERSHIP

BRIEFERS:

DONNA SHALALA,

SECRETARY OF HEALTH AND HUMAN SERVICES

ELI SEGAL,

PRESIDENT AND CEO,

WELFARE-TO-WORK PARTNERSHIP

ELENA KAGAN,

DEPUTY ASSISTANT TO THE PRESIDENT,

DOMESTIC POLICY COUNCIL

BARRY TOIV,

DEPUTY ASSISTANT TO THE PRESIDENT,

DEPUTY PRESS SECRETARY

BODY:

Q I never miss a Shalala briefing -- never.

SEC. SHALALA: Thank you, Sam.

Q He's on the record --

Q (Chuckles.)

(Cross talk.)

MR. TOIV: Good afternoon. Good afternoon. Here to brief today on this wonderful success story are Secretary of Health and Human Services Donna Shalala and Eli Segal, who is president and CEO of the Welfare-to-Work Partnership. And they're -- they'll just take your questions.

SEC. SHALALA: Welfare works, Sam.

Q Well, I know that Mr. Morris, Dick Morris, told the president he ought to sign that bill. Turns out to be right. Is that your view?

SEC. SHALALA: Well, the president made his decision. He believed that welfare could work in this country, and it's working.

Q If I could follow up --

Q You were against it, weren't you, (though?), in the good old days?

SEC. SHALALA: I think the president and I agreed on the -- on what we needed for welfare reform, and we got it. We restored a number of the cuts that were made in that welfare bill the president said he wanted after the election.

But the most important message today is that millions of people are moving off welfare. We have the lowest rates we've had since 1969. And the message from the private sector today is that people not only are taking the jobs, but they're staying in the jobs at higher rates than other employees coming in.

And if you'll remember that one of the early briefings that I did, I said the test of welfare reform is not whether people leave the welfare reforms -- leave the welfare rolls, but whether they stay in the jobs. The test is retention. The story today that Eli and his colleagues in the private sector told is a story of retention, of staying in the jobs.

Q Can I just try a slightly different take on that question? There was a lot of people within your own agency -- and certainly within the broader community of social activists -- who had deep reservations about welfare -- the welfare reform bill. As you talk with them now, how much skepticism does there remain? Or do they look at this program and do you sense a reappraisal?

SEC. SHALALA: As Mary Jo Bane was leaving the department, she said, "Prove me wrong." We're in the process of doing that.

MR. SEGAL: I have a --

Q Mr. Segal, if I could just ask about the economy -- boom times, low unemployment, people wanting workers.

Federal News Service, MAY 27, 1998

So, when it finds that the business cycle has not been repealed, and we go into a recession, what happens to all these people?

MR. SEGAL: Sam, essentially we believe that in the United States we have two unemployment systems. One, the chronologically long-term unemployed; those are the people we say are in the welfare system. The other unemployment system are people like us, our families, our friends, who when they're down on their luck, a company closes, the industry changes a little bit, they lose their jobs. They go onto the unemployment compensation. There's no question but that there are a lot of people who are the last hired, first fired, are going to lose their jobs if and when the economy turns sour. But they would have been involved in productive labor. It's the reason why we say at the Welfare-to-Work Partnership every day we're in a dash, not in a marathon, to ve as many people as quickly as we can into work, into productive work. If, in fact, the economy turns bad, they and many other people may well lose their jobs.

One of the other messages of today -- but in short, they may lose their jobs, but they would have been involved in work, and they're much more likely to get back up on their feet having had a track record in the past.

Q Is there still a safety net if they lose their job?

MR. SEGAL: That's something that I think at some point we're going to need to deal with. At least at this point, our responsibility is to move people to work. There will be millions and millions of new people, there are already hundreds of thousands of people working now who were not working only a year or two ago. And I think if the economy stays strong, we will continue to find jobs and many people making it into the workplace.

SEC. SHALALA: There are actually two experiences that people are having that will be very important no matter what happens to the economy. The first one is they got a job and they kept it for a substantial period of time. The second is that they went through a training process. And that's what's going to keep our economy alive, the training experience, understanding that to take jobs, you have to go through a training experience. And it's companies organizing to move people into different slots as they have needs. And the training may turn out to be as significant for the flexibility of this group of people as actually getting in the job and retaining the job.

Yes?

Q How do you explain the higher retention rates? Is it because of training programs or is it because these employees have fewer other options available to them?

SEC. SHALALA: It may be a small part of the latter that you mentioned, but I think the first part is that companies are beginning to learn what it takes to retain people. Many of the companies talked to the president today about mentoring as part -- getting people ready for the job, putting them through internships or through training, but then assigning someone that would just be an ear for them, that would help them make the transition into work. In addition to that, remember that we've also included child care.

There's now children's health insurance available. The earned income tax credit becomes a powerful incentive because work now pays better than welfare did in the past. So the combination of support -- but the more personalized the system is, the higher the retention. And I think that's what the private sector reported today.

Even in my own department, where we hired 200 welfare recipients, we have substantially changed the employees' assistance program that is the support system for all entry lower-income workers. All of our new workers now have one stop shopping and much more supportive human resource operations.

Federal News Service, MAY 27, 1998

Q You mentioned you hired 200. Can you update us on how the federal government as a whole now stands, how many have been hired at the White House, also?

SEC. SHALALA: Elena, do you want to do that?

MS. KAGAN: We've hired 4,800 as a whole in the federal government. That's 48 percent of the goal that we set for ourselves of 10,000 by the year 2,000.

Different departments have different records. Different departments made different pledges, depending upon the character of their work force.

SEN. SHALALA: My department, for instance, has hired two-thirds of our goal already. So we're going to exceed our goal substantially.

MS. KAGAN: Many departments are finding that. There are very few departments that are running back of their goal. And --

Q How about the White House?

MS. KAGAN: The White House has met its goal, exceeded its goal. It had a goal of six, which, given the White House's small staff, was approximately equivalent to many other agencies' goal. And we acquired seven.

Q Doing what kind of tasks?

SEN. SHALALA: Well, I don't know what the White House people are doing, but ours are mostly entry level jobs, though a couple people have gotten promoted pretty quickly into the system as they've learned the job.

MR. SEGAL: Could I --

Q (Off mike)?

MR. SEGAL: You asked about retention. There are essentially -- the businesses are saying there are about four reasons that almost all give together. First they talk about mentoring or some kind of on-site coaching. Second, they talk about public-private partnerships. They need to do it not by themselves, something that represents a dramatic change from where they were a year ago. They need help. They need help from government, they need help from nonprofit organizations. The third thing they talk about all the time is the nature of the benefit package they're offering, and they have to make it a good benefit package. And fourth, probably most surprising, no compromise with quality. They require and expect those coming off the welfare rolls to be as good employees as any other entry level employee.

One other thing that was interesting today. You would probably have our stereotypes of what a welfare to work person is. One of the things we're learning over and over again is these are not always only entry level people.

We're finding in some companies, people are moving from welfare to white-collar jobs sometimes paying as much as \$30,000. We're finding an incredible varied experience based simply on a commitment of the company to do things the way they knew best. They know how to solve problems on the shop floor, they know how to solve problems in the office, and now they're knowing how to solve this problem. They're all figuring out a different way to do it.

SEC. SHALALA: We also have new statistics on the percentage of people that are leaving welfare who are going into the work force. And the new analysis of the Census Bureau data, between 1976 (sic) and '77 (sic), indicates that 20 percent more actually are moving to work. And remember, people always moved off welfare; some of them got married, some of them moved back in with their families. But what we're finding is a higher and higher percentage of people are going into jobs, number one; and number two, this discussion today, a higher percentage of them are staying in their jobs.

Q Is there any sense that these companies are sort of picking the low-hanging fruit, and it's getting harder and harder to find qualified welfare recipients to take these jobs. (Laughter.)

MR. SEGAL: I am happy to --

Federal News Service, MAY 27, 1998

SEC. SHALALA: Yeah. Yeah. Why don't you take a shot at it, and I actually think the answer is no.

MR. SEGAL: I think the answer is mixed. I think some companies --

SEC. SHALALA: A good controversy.

MR. SEGAL: Some companies, like Cessna, asks no questions about your background. You want to come to work there; they'll invest in making this work for you. For the most part, companies are looking at the most job-ready person first, and there is nothing wrong with it. We are happy to debate creaming or skimming or whatever else we call it. Companies need to get their feet on the ground in this. "Like any other practical problem, let's have some successes."

I think with the passage of time, as they've learned a lot more, they are going to go deeper and deeper into the welfare pool with much, much more success because they've seen it work. Just the way businesses have always done, they've dealt with reality, and they've made success. And they will go on from there. So for the most part, I think we are finding the most job-ready people are people ready to work today, and if not today, tomorrow. But I do think you are going to see other companies -- some of these same companies step it up going forward.

SEC. SHALALA: The reason that I was less hesitant about that is because I think the states have sorted out their welfare rolls. Those that were eligible for SSI that were really truly disabled, have been moved to those programs. And I think that the group that's left on welfare -- remember, we're talking about a new group going into welfare, over the last year of so, in which a larger percentage are going into jobs. So it's harder to make that old argument that we "creamed" during the first couple of years.

So I would suggest to you that the companies are more sophisticated, as Eli has indicated. The government's more sophisticated about support systems; that the states are getting their act together on getting their child care out.

We're giving them lots of technical assistance. Children's health insurance will certainly help. The Earned Income Tax Credit will have a great effect. But people themselves, in their neighborhoods -- the difference between a demonstration program and having everyone in your community having to think now about getting into the work force is that the culture is beginning to change, both in the welfare office and in the communities, to move more people out and to find appropriate opportunities for people.

MS. KAGAN: If I could just add one thing to that, on behalf of Secretary Herman, who isn't here, because the \$3 billion Welfare-to-Work program is really meant to be -- is meant to be geared towards exactly those hardest-to-employ people you're talking about. I think the president understood that there was a need for additional funds to go towards those people, to make sure that those hardest-to-employ people also got an entry into the work force. And the grants that Secretary Herman gave out in the first part of the 25 percent of the program that is in competitive grants towards agencies, mostly community-based -- that really works with those very difficult to employ people and makes sure that they also get the leg up that they need.

SEC. SHALALA: I listened very closely to the private-sector leaders today, and if they have in their heads from now on that these are better employees, that they're more likely to keep them, which saves them money -- it's always cheaper to keep someone than to go out and hire -- and that, as some of them describe it, they're more enthusiastic about working in those places, less cynical -- if that's the attitude they're going into this with, we couldn't be in a better situation at this point in time.

And I can't emphasize enough how significant the retention report is today and the fact that more people are going into the job force, because that was

Federal News Service, MAY 27, 1998

really our test. Our test was never just moving people from welfare to work; it was whether they were going to stick with it in the work force. And we always talked about the first or the second job, because that's what the literature previously told us. But if there is retention going on now, and if the private sector is beginning to see that as significant and economically important to them, then what's going on now is very significant.

Any other questions? All right. Eli? Thank you. Q We at ABC think this is very important, and I will personally brief NBC and CBS and CNN -- (inaudible). (Laughter.)

Q The AP?

Q AP also.

MR. SEGAL: I'd like to make a comment on that. You know, I was last here the day AmeriCorps became the law of the land -- there was a similar number of people here. I actually want to say that -- at the risk of sounding like a cheerleader --

SEC. SHALALA: Oh, go ahead.

MR. SEGAL: -- or a boosterism, this is a big deal. The policy issues were pretty much decided in August '96. This was all turned over to the states, to the people, to the private sector. And it is extraordinary to think that a year ago, this was just an idea. Today we have 5,000 companies -- it's not easy to get 5,000 anythings to do something together -- all of whom with a common mission; they all want to hire welfare recipients.

Now, that might not be -- sound very big from a policy perspective, but in terms of changing America, in terms of kind of changing the hiring practices of America, the fact that these companies have put themselves on the line, some for clearly reasons of charity and being good citizens, but mostly because it's a smart solution for business, I think is a big deal.

And I think we're going to continue to see next year -- 135,000 this year. The president challenged them next year to do twice as many next year. When they do this next year -- when we do this next year -- and you're going to start talking about the people who moved from welfare to work and you're going to compare it with the size of the welfare rolls a year from now, you're going to see that quietly in 1996 began a process that ended welfare as we know it. Now, whether we want to give credit or not give credit, not being the point right now, I think it's a big deal. And whether people are here or not to do it --

SEC. SHALALA: And Eli -- the important thing of Eli's companies is three-fourths are small companies, which is where the growth is in the system.

Q Thank you.

END

LANGUAGE: ENGLISH

LOAD-DATE: May 28, 1998

LEVEL 1 - 38 OF 166 STORIES

Public Papers of the Presidents

May 26, 1998 / May 29, 1998

CITE: 34 Weekly Comp. Pres. Doc. 1001

LENGTH: 218 words

## Public Papers of the Presidents

## HEADLINE: Checklist of White House Press Releases

## BODY:

The following list contains releases of the Office of the Press Secretary that are neither printed as items nor covered by entries in the Digest of Other White House Announcements.

Released May 26

Transcript of a press briefing by Press Secretary Mike McCurry

Transcript of a press briefing by National Economic Council Director Gene Sperling, Council of Economic Advisers Chair Janet Yellen, and Office of Management and Budget Acting Director Jack Lew on fiscal year 1998 and future budget surpluses

Released May 27

Transcript of a press briefing by Press Secretary Mike McCurry

Transcript of a press briefing by Health and Human Services Secretary Donna Shalala, Welfare to Work Partnership President Eli Segal, and Deputy Assistant to the President for Domestic Policy Elena Kagan on the Welfare to Work Partnership

Statement by the Press Secretary: Elections in Hong Kong

Statement by the Press Secretary: Official Working Visit by Bahraini Amir Shaikh Isa bin Salman al-Khalifa

Statement by the Press Secretary: President Clinton To Attend the National Ocean Conference in Monterey, California

Released May 28

Transcript of a press briefing by Press Secretary Mike McCurry

Released May 29

Transcript of a press briefing by Press Secretary Mike McCurry

LANGUAGE: ENGLISH

LOAD-DATE: June 22, 1998

LEVEL 1 - 39 OF 166 STORIES

Copyright 1998 Capitol Hill Publishing Corp.  
The Hill

May 20, 1998 Wednesday

The Hill May 20, 1998 Wednesday

SECTION: Pg. 1

LENGTH: 706 words

HEADLINE: Senate Dems say Clinton ignored them on tobacco

BYLINE: By Laura Dunphy and Philippe Shepnick

BODY:

Democratic senators are angry with the White House for ignoring their concerns while negotiating with Republicans on the tobacco legislation.

Sens. Barbara Boxer (Calif.), Joseph Biden (Del), Edward Kennedy (Mass.) and Frank Lautenberg (N.J.) were among those who vented their anger at a closed meeting of the Democratic caucus with White House Chief of Staff Erskine Bowles on Thursday.

They were incensed over the White House's deal-cutting with Sen. John McCain (R-Ariz.), principal architect of the tobacco bill and were concerned that the White House would cut a deal with McCain that would preclude any Democratic input. They particularly objected to White House attempts to dissuade Democrats from supporting a \$ 1.50 per-pack increase.

The hour-long meeting, in the Lyndon Baines Johnson Room off the Senate floor, was described by one Democratic staffer as "vocal, but not shouting." The senators were most concerned over raising caps and liability, most specifically an increase in the price of packs of cigarettes.

"I wasn't frustrated," Biden told The Hill. "What I did was told the administration that they should make clear exactly what they agreed to with McCain" so the Democrats would be prepared when the bill came to the floor.

The Senate Democrats' anger brought to mind the outrage of House Republicans who were ignored by President Reagan, who frequently cut deals with the Democrats who controlled the House through out his tenure.

One of the sticking points was whether the Clinton administration's cooperation with McCain would undermine the more stringent \$ 1.50 per-pack increases favored by some Democrats, a staffer said.

Bowles said that Democratic senators had been involved in the negotiations, and Minority Leader Tom Daschle (D-S.D.) had been informed every step of the way, according to a White House spokesman.

McCain's bill, which calls for a per-pack increase of \$ 1.10, was supported by the president. Other senators, such as Kent Conrad (D-N.D.) who sponsored an amendment to raise the price increase to \$ 1.50, didn't understand why the administration favored the \$ 1.10 proposal.

A source at the Finance Committee said that until Thursday morning there was "no inkling that the White House would not be supporting the \$ 1.50." Nor was there any idea that Conrad's amendment would be proposed that day, as Senate Minority Leader Tom Daschle (S.D.) had been equivocating on bringing the amendment forth.



The Hill May 20, 1998 Wednesday

Some senators were surprised when Conrad's bill mandating a \$ 1.50 was passed that day at a Finance Committee hearing, a staffer said. Some senators were hoping it would have been introduced later, which would have given it a better chance of remaining in the bill.

The point is moot, since Majority Leader Trent Lott (R-Miss.) deleted the amendment Monday night. Lautenberg and Kennedy plan to introduce their own \$ 1.50 per pack tax increase proposal tomorrow.

Regardless, the issue raised some heads -- and voices -- at the Bowles meeting. "Lautenberg was very vocal that the administration was stuck on a \$ 1.10 and that he wouldn't go to a \$ 1.50. Bowles said that's where the president has been for six months. That's where the president is, "the staffer said.

Bowles added that the president would support the \$ 1.50 increase if it passed with such a provision.

Some felt that the Clinton administration had left Democrats out to dry. One staffer said "the triangle offense of the president (putting himself between the Republicans and Democrats) has made Democrats unhappy for a long time."

One staffer went even further. "This is nothing about triangulation, it's strangulation. This will keep the Democrats in the minority party for the next 10 years. What's the point of having a meeting with Bowles if he's gonna go back and double deal ya?"

One Democratic staffer noted that Bowles' trip to the Hill marked a significant effort to win back the favor of the influential Democrats the White House alienated on this issue. Bowles brought with him administration figures, such as Larry Stein, assistant to the president and director for legislative affairs, Bruce Reed, assistant to the president for legislative policy and his deputy Elena Kagan.

GRAPHIC: Photo 1, Sen. Joe Biden (D-Del.); Photo 2, Sen. John McCain (R-Ariz.); Photos 1 and 2, FILE PHOTO

LANGUAGE: ENGLISH

LEVEL 1 - 40 OF 166 STORIES

Copyright 1998 Cox News Service  
Cox News Service

May 19, 1998, Tuesday 20:17 Eastern Time

SECTION: Washington - general news

LENGTH: 817 words

HEADLINE: HOUSE GIRDS FOR ITS DAY TO DEBATE TOBACCO With TOBACCO-MONEY. By REBECCA CARR

BODY:

c.1998 Cox News Service

Cox News Service, May 19, 1998

WASHINGTON As the Senate debates a sweeping tobacco bill that would generate half a trillion dollars in new revenue and try to dramatically cut the number of teens who smoke, House members are working behind the scenes to be ready for when the spotlight turns there.

There is just one problem.

With House Speaker Newt Gingrich, R-Ga., loudly denouncing the Senate bill as a "money grab" by liberals, groups fighting for comprehensive legislation may find it difficult to build support for a bill as broad as the one being debated in the Senate.

That bill, by Senate Commerce Committee Chairman John McCain, R-Ariz., calls for raising the price of a pack of cigarettes by \$ 1.10 over next five years, expanding the authority of the Food and Drug Administration to regulate tobacco, and imposing steep fines on tobacco companies if they fail to reduce the number of youth smokers.

One of the more contentious provisions in the McCain bill is a cap on payments that the tobacco companies would pay in damage claims each year. Already there are signs that the liability measure would be hotly contested in the House as well.

Given the fight and almost certain court battle over such tobacco legislation, there is a move in the House to piece together a more modest bill aimed at teen smoking.

Rep. Sanford Bishop, R-Ga., thinks he has just bill.

Bishop, whose southwest Georgia district is home to tobacco farmers, wholesalers and tobacco plant workers, said a bill like McCain's would have an adverse impact on his district. He has crafted a bill that would target teen smoking by holding the teenagers themselves accountable as well as the retailers. The bill would: Require businesses to obtain a license to sell tobacco and face the possibility of revocation for selling to minors. Levy fines against minors caught purchasing or consuming tobacco, and possibly cost them their drivers' license. Restrict cigarette vending machines be areas that ban minors, such as a bar.

Bishop's bill has come under attack because it does not address adult smokers and because it does not seek to force the tobacco companies to pay for anti-smoking campaigns as the McCain bill would.

But that does not worry Bishop.

"Hopefully, when the dust settles, people will see this as a realistic way to curb teen smoking without punishing the people who are working in law-abiding professions," said Bishop.

Raising the price of cigarettes alone is not enough, Bishop said. When teenagers are spending \$ 100 on a pair of sneakers, even McCain's proposed increase would hardly be daunting.

Bishop, who does not smoke, thinks smoking cigarettes should be a personal choice for adults and remain outside the government's jurisdiction. "People

Cox News Service, May 19, 1998

have to make decisions and I don't know if Big Brother is the best to make that decision," Bishop said. Bishop said he hoped that the House would be more reasonable in its approach to passing a tobacco bill. "I hope reasonable heads will prevail in the House," Bishop said. "I hope we can move away from the hysteria and the emotionalism and get down to work."

But any bill that comes out of Congress would have to be signed by President Clinton, and the White House wants to see comprehensive legislation along the lines of the McCain bill.

Elena Kagan, a senior domestic policy adviser to President Clinton who helped negotiate the McCain bill, said she hoped that the action in the Senate would give the House impetus to pass similar legislation.

"I don't think there is any doubt that what emerges in the Senate will place enormous pressure on the House to act," Kagan said.

At this point, she said, it was too early to tell what would emerge from the Senate.

The Senate fought throughout the day over the McCain bill, killing a Republican amendment to limit lawyers' fees and battling over what to do about the nation's 124,000 tobacco farmers.

"They negotiate settlements in the millions and billions of dollars and they take fees in the millions and billions of dollars," said Sen. Lauch Faircloth of North Carolina, one of several Republicans behind the proposal to limit fees to \$ 250 per hour.

But that was hardly the most contentious part of the debate. Senate Majority Leader Trent Lott, R-Miss., angered Democrats from tobacco states by backing an amendment that would have gotten rid of a provision to protect the tobacco farmers.

Lott used his prerogative on Monday night to advance an amendment relating to tobacco farmers that was vehemently opposed by Sens. Wendell Ford, D-Ky., and Ernest Hollings, D-S.C. because it would dismantle the government subsidy program for tobacco farmers.

"Let me provide fair warning," Ford said. "I will keep my pledge to tobacco farmers. I will do everything in my power to oppose attempts to ... attack the federal tobacco program."

LANGUAGE: ENGLISH

LOAD-DATE: May 20, 1998

LEVEL 1 - 41 OF 166 STORIES

Copyright 1998 The New Republic, Inc.  
The New Republic

MAY 18, 1998

The New Republic MAY 18, 1998

SECTION: White House Watch; Pg. 21

LENGTH: 1588 words

HEADLINE: WONDERWONK

BYLINE: Dana Milbank

## BODY:

In December 1996, Elena Kagan quit her job as a lawyer in the White House counsel's office to return to the University of Chicago, where she was a tenured professor of constitutional law. She had already scheduled the movers, and 120 law students in Chicago had registered for her class. Colleagues had even given her a sendoff in the White House mess. But Bruce Reed, Clinton's new domestic policy chief, begged her to stay, offering her the number two spot on the Domestic Policy Council and promising her an equal partnership running the White House policy shop. It was an unconventional choice, and some in the West Wing wondered why Reed would pick a lawyer to be top wonk.

They don't wonder anymore. Kagan, though virtually unknown outside the White House, has become the administration's lead negotiator on tobacco, crafting much of Senator John McCain's tobacco legislation. The story of Kagan's involvement in hammering out a deal with Senate Republicans illustrates just how active the administration has been in shaping tobacco legislation behind the scenes. Although Reed and White House Chief of Staff Erskine Bowles are the public faces of Clinton's tobacco team, Kagan engineered the White House's most significant win in the tobacco talks so far: convincing McCain and his fellow Senate Republicans to give the Food and Drug Administration full regulatory authority over tobacco, while keeping the administration's bureaucrats at bay.

Giving the FDA broad power over tobacco (which the industry dodged in last year's settlement with state attorneys general) should do more than the blunt instrument of taxes to wipe out smoking. Even if the McCain legislation fails, which seems increasingly likely in light of Republican opposition in the House, the groundwork has been laid for including FDA regulation in whatever tobacco legislation eventually passes. As Kagan puts it: "Having McCain's and Tennessee Republican Senator Frist's agreement on this means we have a fairly broad, bipartisan approach, and it will make it into the final legislation regardless of what else is in it."

Ironically, Kagan was a teenage smoker herself and quit only in 1993 after 17 years. "I love smoking, and I still miss it," she says. "It's completely clear to me how addictive this product is. But it's also clear to me how much people can enjoy smoking." Now 38 years old, she has a no-frills appearance and a New York accent left over from her childhood on Manhattan's West Side. Kagan met Bruce Reed at Princeton, when she was opinion editor of The Daily Princetonian and he was a columnist. After an Oxford fellowship and Harvard Law School, she clerked for Thurgood Marshall and worked on the Dukakis campaign, then joined the law faculty at Chicago.

Kagan's legal training came in handy in her forays into the minutiae of tobacco legislation. Her moment came in late March, when Reed was vacationing in Europe and Kagan squared off with Republican senators and their staffs on the eve of the Senate Commerce Committee's April 1 markup of the legislation. An earlier proposal by Republican senators James Jeffords and Orrin Hatch had

The New Republic MAY 18, 1998

fallen apart over the question of giving regulatory authority to the FDA.

The White House started by arguing that the FDA should regulate tobacco under the "drug and device" chapter in the law, essentially codifying the authority that the agency has already claimed for itself--and which the tobacco industry is currently challenging in court. Senators McCain, Frist, Hatch, and Jeffords all objected, as did the pharmaceutical industry, which feared that it would get harsher treatment along with tobacco. But the FDA insisted on the "drug and device" chapter, figuring that losing this would weaken the regulations and make the agency more vulnerable to court challenges. That might have been the end of it, but Kagan hatched a plan for a separate title under the law for tobacco, giving the FDA virtually the same regulatory language and legal standing it demanded, but moving the wording to another part of the law to soothe the Republicans.

That seemed to hold, but, as late as Friday, March 27, the agreement again was in danger of falling apart when Frist raised new concerns. He worried that, under the new title, the FDA would get authority over tobacco farmers, not just tobacco, and that the FDA might go too far in limiting retail sales of tobacco or in banning nicotine. Kagan pleaded for 24 hours to work out a deal, and she went through each point with the senator in painstaking detail. Negotiations stretched into the wee hours of the morning. They finally agreed that the FDA would delay by two years any serious action--say, eliminating a class of tobacco product or reducing or eliminating nicotine content--so Congress could review the decision. She also convinced the agencies to accept this token recognition of Congress's prerogatives. Congress, she argued, can reverse FDA decisions anyway. By late Saturday, the deal was done.

Kagan broke a third impasse in the FDA talks when McCain demanded language guaranteeing that the FDA would examine whether its actions could stimulate a black market in tobacco. If, for example, the FDA required all cigarettes to taste awful, smokers would turn to contraband. The FDA balked at such an economic restriction, and talks bogged down. But Kagan "finessed the issue," says Rich Tarplin of the Department of Health and Human Services, who negotiated alongside Kagan and the FDA's William Schultz. She found a legalistic way to give over to McCain without unduly restricting the FDA. Specifically, she agreed to language calling on the FDA to make the black market a "consideration" but assured the FDA it would never be held legally accountable if a black market did develop. Hearing the law professor's case, Schultz and Tarplin consented, and the talks went on.

The Commerce Committee endorsed McCain's bill with a 19 to one vote, and the bill is due to reach the Senate floor the week before Memorial Day. Although it got most of what it wanted, the Clinton administration is still haggling to toughen the bill's so-called "look back" provisions by making penalties for missing teen-smoking reductions company-specific. It also wants to tighten the bill's indoor-air-quality provisions. But these considerations, and even the \$1.10-per-pack tax increase over five years, should turn out to be less significant than giving the FDA say over what, where, how, and to whom the tobacco industry sells. The FDA provision was "the toughest nut to crack," says Reed. Without it, "the whole thing would've blown up."

Kagan has become something of an all-purpose brain in a place full of people who are more smart than wise. Last Tuesday, when aides were preparing the president for a meeting, he was stumped about a question on Supreme Court

The New Republic MAY 18, 1998

rulings on federalism. Instead of calling the Justice Department or the counsel's office, Clinton sent for Kagan. Clinton and Kagan sat in the Oval Office discussing various rulings, wonk to wonk. On tobacco, her legal experience often allows her to beat back challenges from her own side, including concerns the Justice Department had about the constitutionality of liability provisions and of restrictions on cigarette advertising. Normally, objections from the Justice Department would put a halt to negotiations, leaving the White House negotiator furious but powerless. But Kagan "can engage with us and figure out how we can get it done," says David Ogden, who represents the department on tobacco matters.

Kagan uses knowledge as a weapon, absorbing thousands of pages of legal and policy minutiae and then deploying information to beat down opposing arguments. "I don't want to tell you that she rolled me, but she was coming at me so hard," says a Hill negotiator who opposed Kagan in much of the negotiation. "She reminds me of Bobby Knight's old University of Indiana basketball teams that used to wear you down with defense."

The combination of Reed and Kagan, who takes Reed's place twice a week at the daily 7:45 a.m. meeting with Bowles, has made the White House policy operation more prominent than in the early Clinton years. Some resident eggheads had been fluent in policy but politically tone-deaf, drawing complaints of arrogance from the Hill. And academic purists in the agencies have campaigned vigorously against the White House at times. During welfare reform, the scholarly types at HHS fought tooth and nail against the president's executive orders loosening federal regulation of state programs; several academics resigned after Clinton signed the welfare reform law. But Reed has found a hybrid in Kagan, a nerd who can talk tough. John Raidt, the Commerce Committee's staff director, who sat across the table from her through most of the talks, contrasts Kagan's cool performance with the way some other administration negotiators "lash out and get angry, because they don't always know what's going on."

Kagan says she'll see the tobacco law through, but she doubts she'll stick around for the rest of the Clinton years. "I miss the academic life," she says. If she's lucky, she might even land a judgeship. You can picture it now: the woman who vanquished tobacco, in her chambers, surrounded by legal volumes, finishing off an opinion--and reaching into her desk for a lighter and a highly taxed stogie. Cigarettes are out, Kagan says, but "I still smoke the occasional cigar."

(Copyright 1998, The New Republic)

LANGUAGE: English

LOAD-DATE: May 14, 1998

LEVEL 1 - 42 OF 166 STORIES

Copyright 1998 Star Tribune  
Star Tribune (Minneapolis, MN)

May 9, 1998, Metro Edition

SECTION: Pg. 1A

Star Tribune (Minneapolis, MN), May 9, 1998

LENGTH: 1538 words

HEADLINE: Cost of national deal probably just went up

BYLINE: Greg Gordon; Staff Writer

DATELINE: Washington, D.C.

BODY:

The 12th-hour deal settling Minnesota's tobacco case does not deliver the "knockout punch" of a jury verdict, but experts said it could drive the industry's cost in any national settlement to more than \$ 500 billion.

The \$ 7.035 billion settlement in the Minnesota case "will blow the tobacco industry's sweetheart deal out of the water," declared Eric Johnson, the top aide to state Attorney General Hubert Humphrey III.

The industry has been holding out for a national settlement similar to the 25-year, \$ 368.5 billion deal it signed in June 1996. That proposal would have allotted \$ 4 billion to reimburse Minnesota for its smoking-related Medicaid costs.

Friday's settlement, drawn up as a legal contract that cannot be overridden by Congress, boosted Minnesota's share by more than 50 percent.

President Clinton said in a statement that the Minnesota settlement "will help us combat tobacco industry marketing to kids" and provide "still further momentum" in the push for comprehensive tobacco legislation in Congress.

George Washington University law Prof. John Banzhaf said that, when other states see the Minnesota settlement terms, they "are going to insist that their share of the pot in any federal settlement legislation be much, much bigger."

Former Maine Attorney General James Tierney, a consultant to the 41 states that have sued the industry, also said the Minnesota outcome makes a national settlement of at least \$ 500 billion more likely "because the industry has got no place to hide."

He said, "They've made it clear that when they're faced with a final adjudicator, like a jury or Congress, they will cough up the money and go along with the regulations."

Several legal experts said the industry could be forced to renegotiate settlements it has reached with Texas, for \$ 15.3 billion; with Florida, for \$ 11 billion, and with Mississippi, for \$ 3.3 billion, because all three states were promised that their per-capita payments would match those in any richer deal.

Banzhaf, who heads a legal-action group opposed to smoking, said Friday's agreement also could make it more difficult for tobacco companies to persuade Congress to grant them immunity against future class-action lawsuits. Instead, they could face a spate of new suits - including from health plans following in the path of Blue Cross and Blue Shield of Minnesota.

Star Tribune (Minneapolis, MN), May 9, 1998

Yet cigarette makers also may have benefited from the settlement. Resolving the Minnesota case "eliminates the lawsuit that the industry was most fearful of, and therefore could well lessen the tobacco companies' sense of crisis," said Matthew Myers, an executive vice president of the Campaign for Tobacco-Free Kids.

"It could mean that they'll play even harder," he said.

Minneapolis lawyer Randy Hopper, who is involved in class-action suits that would be part of a national settlement, said tobacco executives made clear that they want to stop the "litigation machine" that cost them \$ 650 million in one year.

But he contended that Humphrey's primary accomplishment was getting more money for the state because the settlement proposed a year ago would have accomplished the same policy goals of halting youth cigarette marketing.

Experts generally agreed that the biggest effects of the state's suit already may have occurred, when Humphrey's hired gun, the Minneapolis law firm of Robins Kaplan Miller & Ciresi, won the release of 39,000 long-secret industry documents and amassed 33 million pages of tobacco company records. The documents revealed new evidence that the companies marketed cigarettes to children, despite knowing of their dangers and addictive nature.

"This suit has had an extraordinary influence in terms of educating people as to what the real facts are - educating the public, educating members of Congress," said Elena Kagan, a deputy assistant to Clinton for domestic policy. "Attorney General Humphrey has done everything that he set out to do, which is to get all the information out."

Johnson, Humphrey's executive assistant, said the documents revealed in the Minnesota case "were absolutely critical in defeating the industry's bailout deal" in Congress.

The state's presentation of its case, he said, will "provide a playbook for every state in the country" with suits pending.

#### Interest in documents

Absent a national settlement, the next state tobacco trial is scheduled for September in Washington state, to be followed by Oklahoma and Arizona in December and Massachusetts and Connecticut in January 1999. Lawyers from those and other states have monitored the Minnesota trial closely and visited the Minneapolis vault where industry documents are stored.

They have been able to see "exactly how the industry will try their case, who they'll use as experts," Tierney said. "All those trial transcripts are already in the hands of the other states."

Iowa Attorney General Tom Miller, who was among those who saw the thousands of boxes of documents in the Minneapolis vault, said they "will be potentially very helpful" in his suit, particularly in pursuing a racketeering count.



Star Tribune (Minneapolis, MN), May 9, 1998

Each state faces different legal hurdles, however, because state laws vary and courts have differed on whether the industry can be sued under common law.

The Minnesota settlement, Miller said, could sway the Iowa Legislature to reverse a narrow vote and pass a bill authorizing his office to recover money spent in treating tobacco-related illnesses.

Tierney said the breadth of the disclosures in the Minnesota case also have drawn worldwide attention.

"A lawyer in England calls me every day," he said. "He is especially pleased . . . that the London records depository on British American Tobacco is going to be fully opened" as a result of the Minnesota suit, in which BAT subsidiary Brown & Williamson Tobacco was a defendant.

Banzhaf said the industry's decision to avoid a jury verdict in Minnesota could trigger a flurry of new tobacco suits. Plaintiffs, he said, could include casino employees, who are heavily exposed to secondhand smoke.

But Myers, of the Campaign for Tobacco-Free Kids, said court settlements will not protect all the nation's children. "Fundamental change will come about only through a knockout punch in the courts or through tough, comprehensive legislation."

Tobacco companies have launched a lobbying campaign to defeat congressional proposals, including a \$ 516 billion package by Sen. John McCain, R-Ariz., to protect cigarette makers from future class-action suits.

Sen. Orrin Hatch, R-Utah, the chairman of the Senate Judiciary Committee, has proposed a slimmer, \$ 398 billion national settlement package. But he said Congress is in "a quagmire" over the issue. He said that McCain's bill, even though it was approved 19-1 by the Senate Commerce Committee, never would pass the Senate. He allowed, however, that the Minnesota outcome will create "an added force" toward bringing a settlement.

But Sen. Kent Conrad, D-N.D., who heads the Senate Democratic caucus' antitobacco task force and has proposed a \$ 550 billion national settlement package, contended that the industry's acceptance of such strong terms in Minnesota "completely undercuts" its opposition to his and McCain's proposals.

#### Tobacco suits across the nation

The outcome of the Minnesota tobacco trial is being watched closely by attorneys general in other states and by county and city officials who have filed their own lawsuits or are thinking about it. In addition to state lawsuits, suits have been filed by San Francisco County with 10 other counties and the city of Los Angeles; by Los Angeles County; by the mayor of Brook Park, Ohio, and Cuyahoga County on behalf of the state of Ohio and all Ohio taxpayers, and by New York City. A private class-action suit also has been filed in Alabama.

Star Tribune (Minneapolis, MN), May 9, 1998

Here s a look at where other states stand.

HAVE NOT FILED

Alabama

Delaware

Kentucky

Nebraska .

North Carolina

North Dakota

Tennessee

Virginia

Wyoming

HAVE FILE, BUT HAVE NOT SET TRIAL DATE

State Date suit filed

Alaska 4/97.

Arkansas 5/97.

Colorado 6/97.

Georgia 8/97.

Hawaii 2/97.

Idaho 7/97.

Illinois 11/96.

Indiana 2/97.

Kansas 8/96.

Louisiana 3/96.

Maine 6/97.

Maryland 5/96.

Star Tribune (Minneapolis, MN), May 9, 1998

Michigan 8/96.  
 Missouri 5/97.  
 Montana 5/97.  
 Nevada 5/97.  
 New Hampshire 6/97.  
 New Jersey 9/96.  
 New Mexico 5/97.  
 New York 1/97.  
 Ohio 5/97.  
 Oregon 6/97.  
 Pennsylvania 4/97.  
 South Carolina 5/97.  
 South Dakota 2/98.  
 Utah 9/96.  
 Vermont 5/97.  
 Puerto Rico 6/97.

TRIAL SCHEDULED

Arizona: October or December 1998.  
 California: Sometime in 2000.  
 Connecticut: January 1999.  
 Iowa: Sometime in 1999.  
 Massachusetts: January or February 1999.  
 Oklahoma: November or December 1998.  
 Washington: September 1998.  
 Wisconsin: September 1999.

Star Tribune (Minneapolis, MN), May 9, 1998

## SETTLED

Mississippi: Settled for \$ 3.36 billion July 2, 1997.

Florida: Settled for \$ 11.3 billion August 25, 1997.

Texas: Settled for \$ 15.3 billion January 22, 98.

Minnesota: Settled for \$ 7 billion May 8, 1998.

Sources: State Tobacco Information Center, Tobacco Control Resource Center Inc. and the Tobacco Products Liability Project.

GRAPHIC: Map; Map; Photograph

LANGUAGE: ENGLISH

LOAD-DATE: May 12, 1998

LEVEL 1 - 43 OF 166 STORIES

Copyright 1998 UMI, Inc.; ABI/INFORM  
Copyright Michigan Law Review Association 1998  
Michigan Law Review

May 1998

SECTION: Vol. 96, No. 6 Pg. 1578-1597; ISSN: 0026-2234; CODEN: FUTUAC

LENGTH: 9046 words

HEADLINE: Picking federal judges: A mysterious alchemy

BYLINE: Schattman, Michael D

## BODY:

Headnote: Michael D. Schattman\* Each filling of a judicial vacancy is a minidrama of individual ambitions, backstage maneuverings, mobilization of support, and occasional double-dealing, and is affected by the values of those involved in the process. There is human drama as political forces, events and personalities intersect. And the end result is the staffing of the third branch of government, which by its actions - or inactions - has a profound effect on American lives. (p. 365; footnote omitted) With these words, Professor Goldman concludes the lesson he began nine chapters earlier as he embarked on his exploration of the seldom-mapped territory where the American government sets about building that smallest part of itself that has the most day-to-day continual contact with the American people. But I would hope that the readers of this review and of this book would keep that simple lesson uppermost in mind as they consider Sheldon Goldman's unique contribution to our understanding of ourselves. INTRODUCTION I have twice been nominated to the federal bench by President Clinton. The first nomination, in December 1995, lapsed at the end

of the 104th Congress. I was renominated in March 1997. I have never had a hearing and never had a letter from the Senate Judiciary Committee requesting additional information. In 1995 and again in 1997 the White House precleared my nomination with my two home-state Republican senators. Originally, I was nominated before the scheduled retirement date of the judge I was named to replace, which gives knowledgeable readers an idea of the lack of controversy surrounding my appointment. I had strong bipartisan support. In July of 1997, however, almost two years to the day after I was first recommended to the President by the Texas congressional delegation, my affirmative blue slips were suddenly withdrawn by the Texas senators.<sup>2</sup> For those readers who have no idea what withdrawal of blue slips means, I recommend perusing Sheldon Goldman's *Picking Federal Judges: Lower Court Selection from Roosevelt Through Reagan*. It should be read by every lawyer who wants to be a federal judge as well as by those who practice in front of them. Much of its importance resonates in the current political atmosphere and can be seen in the increased attention given to presidential nominations, judicial or otherwise, in both the popular press and legal academia. This is due in part to the personal peccadilloes of the nominees -- consider, for example, former Senator John Tower's lifestyle, which was so criticized by his fellow Republicans, or Zoe Baird's failure to pay social security on domestic help despite two large professional incomes. The nominee becomes a caricature of a social problem and an object lesson for the public. It is also important to a growing understanding of the role these once-anonymous persons play in the life of the Republic and in the lives of each of us. This latter realization may account for the proliferation of scholarly articles devoted to the nomination process that have appeared in the last few years.<sup>3</sup> These articles, however, are not likely to be read widely even in legal circles. Goldman's book provides information to lawyers, judges, the press, and the general public in an anecdotal format and with an astounding amount of insider detail -- including handwritten notes between presidents and their confidants.<sup>4</sup> He spends little time on wellcovered Supreme Court nominations, concentrating as his subtitle says on lower court selection. Goldman's book is a work of political science, and it is short on the historical context that would be useful to interpret the tables located throughout the text. In fact, it does not tell you nearly enough about blue slips.<sup>5</sup> But it certainly will allow you to refute the common misconception that the politicization of nominations started with Judge Bork. I wish to settle that bit of historical inaccuracy first: politicization of the process of selecting federal judges has been around for a long time. Less than two years after Truman became president upon the death of Roosevelt, the Republicans gained control of the Congress. Wisconsin Senator Alexander Wiley headed the Senate Judiciary Committee. According to Goldman, Senator Wiley announced even before he assumed the chairmanship that the Senate would confirm no "leftists" (p. 81). Soon after, he stated he wanted a political balance in appointments--that is, more Republicans. Next, he proclaimed his opposition to any New Dealers. His committee held up nominations and the number of confirmations began to drop: sixteen in 1946 when the Democrats were in control, ten in 1947 under the party opposite the president, and in 1948, anticipating President Dewey, the total confirmed by the Republicancontrolled Senate dropped to three (p. 81). I cannot say, for this is not a history book, whether this strategy led to the appellation "do-nothing Congress" and the triumph of Harry Truman. It was, however, nearly fifty years before the country chose again to have a Democratic President paired with a Republican Senate. It is somewhat surprising, given the previous results, that the Republican leadership would resurrect Senator Wiley's old playbook. Yet here we are today, hearing almost the same words and watching the same damming up of the process. Contrast this approach to Goldman's account of the Democratic-controlled

Senate's approach to President Nixon's judicial nominees as impeachment and resignation loomed. As August 1974 began, only one of Nixon's judicial appointees remained pending. Then, on August 8, his last full day in office, Richard Nixon nominated three more judges. All four of his final nominees were confirmed (p. 226). As Professor Goldman makes obvious to the diligent reader, there is no need for Wiley-like behavior.<sup>6</sup> This system designed by our Founding Fathers is so evenly balanced that by 1961, after twenty years of Roosevelt-Truman followed by only eight years of Eisenhower, the federal judiciary was evenly split between Democrat and Republican office holders (p. 157). This is despite the fact that the Senate had a Democratic majority for twenty-two of those twenty-eight years, including the final four opposite Eisenhower. It is an excellent example of letting the political market take its course without deliberate interference. Individual candidates should be reviewed on the merits. That is what the Constitution demands and expects. Those who would deliberately interfere with the process in order to limit the total output are selfish and reckless. They are selfish because deliberate interference is a bullying tactic adopted by sore losers that says in effect: you won but you can't have the prize. They are reckless on two bases. On a narrow basis, this strategy led the Republicans to defeat in 1948. On a wider basis, it interferes with the natural pendulum swing of free ideas which has protected our nation from the upheavals so common in other democracies. A state without the means of some change is without the means of its conservation. --Edmund Burke<sup>7</sup>

PERSPECTIVE The best way to approach this book is to use the same roadmap as Professor Goldman - the successive presidential administrations that have introduced judicial nominees to the Senate and the people. He does so in nine chapters, with the first giving a general overview from 1789 to 1933. Seven chapters follow analyzing the selection process and criteria by each administration from Roosevelt to Reagan (Kennedy and Johnson are considered in one chapter, as are Nixon and Ford). The final chapter reprises what has gone before and then, for scholars or the incurably curious, a concise note on the sources available to most anyone, and finally forty-two pages of excellent detailed notes. I shall follow the same route and take the chapters and presidents in order. While the opening chapter in Goldman's book is entitled "Judicial Selection in Theoretical and Historical Perspective," it is really more a description of his personal framework for reading a president's mind. He describes three presidential agendas: policy, partisan, and personal (p. 3). The policy agenda is "the substantive policy goals of an administration." The partisan agenda is Goldman's shorthand for the use of power "to shore up political support for the president or for the party." Finally, the chief executive's personal agenda is not surprisingly defined as his use of "discretion to favor a personal friend or associate." From time to time in later passages the author reminds the reader of these concepts as he discusses the making or unmaking of a particular nomination or how one agenda was served by another. The problem with the agenda concept is that some presidents delegated this job almost completely. Furthermore, the relative value Goldman places on these distinctions is apparently low since there is no chart referencing or cross-referencing this information. It appears sporadically in the text and not in the final summations. Goldman uses historical perspective to mean a summary of the period between the Constitutional Convention and Herbert Hoover - that is, the time prior to the start of Goldman's research. Perhaps because I majored in history and have made it a lifelong passion, I craved historical perspective. It is difficult to determine what any president was thinking, policy versus party interests, if you cannot put decisions into the context of the issues of the times and the place. If this book is ever updated it ought to be coauthored by a historian. ROOSEVELT Franklin Roosevelt's meticulous attention to the

slightest detail and his apparent delight in manipulating the pieces on the chessboard are the hallmarks of his selection of judges for the federal bench. If the author's agenda analysis is helpful at all, it is perhaps most helpful here in appreciating Roosevelt's understanding of how the three tracks can be used all the time. FDR was quick to see that the old men on the Supreme Court could prevent the reforms he had conceived to rescue the nation from depression and revolution. He was quick to see a solution and to push it despite the cautions from his close advisers. When public opposition forced the Congress to reject his court-packing plan, Roosevelt quickly adapted. The natural attrition of death and retirement soon allowed his nominees to become members of the Nine. In turn he directed his attention to the lower courts and their impact on his policies. Although the author does not discuss the question, it may be that FDR's experience as a governor of a state with a judiciary that was entirely elected helped to inform his approach to picking judges. He understood the nuances of filling vacancies and satisfying the patronage needs of an individual senator from his New York experience. But here on the larger stage he saw a broader picture and sought nominees who would help fill out the canvas. Consequently, as Goldman makes clear, he took an active role in looking for and screening the nominees sent to him. FDR understood that senators had both partisan and personal agendas that he could use to his advantage. Still, he was cautious. While he attempted to meet the needs of specific New Deal constituencies such as minorities and women, he did not act so precipitately that he alienated another part of the coalition, whether southern senators or city bosses, on a specific nomination. Numerically, he succeeded in placing the first woman on a federal court of general jurisdiction Florence Allen on the Sixth Circuit - and the first black on a federal district bench - William Hastie in the Virgin Islands (pp. 51-57). Roosevelt found that his discretion was circumscribed by the Senate as well as by his own desire to achieve his other broader policy goals. TRUMAN Coming into the presidency as he did, Harry Truman carried on where Roosevelt left off. This is true of his judicial appointments as well. If there was a honeymoon for the man who found himself facing Stalin at Potsdam and making the decision to drop the atomic bomb, it was not in the area of picking judges. In office for a week, he was visited by the senators from North Carolina to discuss judgeships in that state (p. 68). More a political figure than a national one like Roosevelt, the former senator was more deferential to the wants and desires of senators - even Republican senators - than his predecessor. Yet he came to understand the prerogatives of his new office and to guard them stubbornly if need be. Like Roosevelt, Truman worked through his Attorney General and the Democratic National Committee chair on judicial appointments. Unlike Roosevelt, Truman was more of a hands-off president and rarely attempted to micromanage the process of finding, selecting, vetting, appointing, and confirming his judges (p. 69). He did pay close attention to what happened in his home state of Missouri even as its political leaders and its senators worked names through the system. Truman's appreciation for patronage and party building seems to have smoothed much of his appointment road, but there were some exceptions. In Georgia, Truman elevated the brother of Senator Russell to the Fifth Circuit, but then he and the Senator disagreed over the brother's successor. Finally, after a long fight the two men met and Truman agreed to Russell's choice (pp. 71-72). In Vermont, Truman fought and won a behind-the-scenes battle with the Vermont Democratic Party leadership to name a Republican and former senator to a federal district court in that state (p. 69). The Vermont Democrats were focusing on party building and Truman on naming a man he knew and respected, regardless of party. An intra-party fight among California's Democrats illustrates the problem of state-by-state selection that drove President Carter years later to try to rationalize and systematize the

process on a national basis. Party factions in California were at loggerheads on potential nominees for two district court vacancies. The party organization had its choices and the state's senior senator had his own. Stalemate set in for over a year and each attempt by Truman to make peace ended in failure, if not renewed acrimony. Finally, illness forced the senator's retirement and Truman was able to make his own choice - one from each faction (pp. 72-73). With the Republican victory in the 1946 congressional elections, Truman faced a hostile Senate and a Republican majority confident that the president was irrelevant. The result was the program of Senator Wiley mentioned above - no leftists, no New Dealers, more Republicans and in the end almost no confirmations (p. 81). Determined to block the appointment of women and blacks, Senator Wiley brought the American Bar Association into the process to screen and give its evaluation of nominees -- previously the function of the Justice Department and the FBI (pp. 86-88). Wiley's plan worked. Even after Truman's victory in 1948, the ABA's participation ensured that by the end of his term he had named only one woman, Burnita Matthews of Mississippi backed by Senators Eastland and Stennis, to the federal district court. He also elevated William Hastie to the Court of Appeals for the Third Circuit (pp. 96-97, 100-01). On the public policy front, Truman carried to completion the legislative programs of the New Deal and began civil rights initiatives, but this seems unconnected to his judicial appointments, where he focused on accommodating individual senators. Or was it unconnected? Truman's number of appointments of Catholics and Jews to the federal judiciary was many times that of Roosevelt, reflecting their importance in the ruling Democratic coalition (pp. 107-08). The picture emerges of a president more conscious than his predecessor of the impact judicial appointments have on other policy choices made by the legislative branch, but more confident of his ability to understand and influence those choices without micromanagement that would cost him both legislative support and his nominees. EISENHOWER Not surprisingly, the management style of a president who had grown up in the electoral rough-and-tumble of western Missouri politics was different from that of his successor. Dwight Eisenhower had spent a lifetime in the command structure of a professional army and was noted for understanding the impact of logistics on victory. Both Harry and Ike got along well with subordinates - few other presidents radiate that comfortable feeling of first-name familiarity - and were students of persons and personalities. But each demonstrated an approach to picking judges that resembled his own management style. Truman's sitdown-and-deal gave way to Eisenhower's by-the-book. But Eisenhower understood that there was both a governmental and political purpose to this exercise. When Eisenhower took office after twenty years of Roosevelt and Truman, the judiciary was 77.5% Democratic appointees (p. 112). This level of imbalance would not be matched until Clinton succeeded twelve years of Presidents Reagan and Bush.<sup>8</sup> A former military man, at first the new president liked judicial nominations to go through channels. But realizing their dual governmental and political purpose, he soon directed that judicial nominations be cleared through the Republican National Committee. As time went on and he learned more about the process, he instructed the Attorney General to put him in the decisionmaking loop (p. 113). But Eisenhower became dissatisfied with even this approach as he felt that he needed to be involved before the final decision was made. He called for closer consultation with the Justice Department earlier in the process. Goldman does not say it, but you come away with the feeling that Eisenhower was impelled to have the same influence on who moved up in the judiciary as senior commanders have on the development of the officer corps. It also seems clear that he wanted some flexibility so that he could deal with the Senate. These suppositions may account for how the use of the ABA became institutionalized under Eisenhower (p. 137). What better way to build in the firmness of command structure, yet



preserve for the commander the option of selecting a candidate not of a senator's choosing, than to bring in an institution akin to the Army's personnel boards? Eisenhower, having directed an Allied coalition, had an understanding of coalition politics. While the Senate was Republican during his first two years, Eisenhower then had to deal with a coalition of southern Democrats and Republicans from 1954 until 1958, when an economic downturn prompted the election of seventeen new Democratic senators, including many liberals (p. 110). Eisenhower's Justice Department was aggressive in giving its commander-in-chief the flexibility of choice he desired even if it meant stepping on the toes of GOP Senators. Republican minority leader Everett Dirksen held up and even killed Eisenhower nominations if he felt that Republican senators were not given their due. Democratic majority leader Johnson once briefly held up all action on nominations until the Republican National Committee included one candidate desired by Johnson on the list of nominees.<sup>9</sup> Goldman misses some opportunities in this section. Although he notes Ike's interest in appointing Catholics as tied to partybuilding (p. 116) he does not consider that side of Eisenhower's persona as a master of coalition management that made this a natural decision for the military man now come to politics.<sup>10</sup> While the appointment of William Brennan is presented with some context and detail, the appointment of California Governor Earl Warren as Chief Justice just nine months into Eisenhower's term is just stated and passed over without discussion (p. 109-10). There is no consideration of the political motives or how it impacted Eisenhower's relation to the Senate in making selections for the lower courts. This may have been outside the author's scope, but it is something to pause and think about. Finally, although the "blue slip" was invented in the Eisenhower era, there is no mention of it in this chapter.<sup>11</sup> In May 1958, after five years in office, Eisenhower expressed uncertainty about the proper role of courts in a democracy. He sent Attorney General William Rogers a lengthy memo asking probing questions about the courts, legislation by the courts versus decision making, the federal-state relationship, and the limits to Congress's control over the courts (p. 125). Rogers responded with a comprehensive seven-page, single-spaced letter explaining the proper role of the courts in reviewing legislation, the use of phrases such as "due process" and "equal protection" in our constitutional framework, the use of judicial legislating both as an accurate and as an oversimplified criticism, and the need for the judiciary, despite the occasional error, to be independent so that the integrity of the decisional process could be maintained (pp. 125-26). This remarkable exchange reflects well on both Eisenhower and Rogers as they tried to come to a common understanding so that the man who led the free world would know what one third of his government was about. This same concern led Eisenhower to inquire about the propriety of a recess appointment.<sup>12</sup> Upon being assured by his Attorney General that the power could be properly exercised, he did so with dispatch (pp. 119-20). In choosing his judges Eisenhower displayed a remarkable lack of ideology. One of his appointees, Judge John Minor Wisdom, described Eisenhower's style in recruiting and screening judges as follows: "There is no cataloguing of biases or prejudices .... Instead, what is of concern is whether the man is a qualified lawyer, knowledgeable, has community standing and judicial temperament" (p. 124). Eisenhower's record of appointments differed significantly from his predecessors. Over 70% of Ike's first-term judges came from private practice compared to 26% for Truman. In his second term, Eisenhower chose 56% from private practice. One third of the first group and one-half of the second came from medium-to-large firms, including many prominent firms. By contrast, none of Truman's first-term appointees came from such firms. Ike appointed no law professors and, unlike Truman and Roosevelt, no sitting member of Congress. About 60% of his judges had records of prominent party activism (p. 151).

However, perhaps because of the criteria mentioned by Judge Wisdom, none of Eisenhower's nominees was rejected by a vote of the full Senate (p. 152). KENNEDY While John Kennedy undoubtedly had an interest in judicial selection there are no memos or notes that document his involvement (p. 158). It appears matters were handled by phone or at lunch with his brother, the Attorney General, and others with whom he had close ties. Robert Kennedy said that the President became actively involved only in about a half-dozen situations where members of Congress wanted someone other than the prospective nominee (p. 159). Like Truman before him and Johnson afterward, Kennedy came from the Senate and senators of the President's party therefore exerted great influence over the selection process (p. 173). Professor Goldman states that no mention of a role for the DNC in judicial selection is found in Kennedy's papers (p. 174). Kennedy continued to utilize the ABA in screening as had Eisenhower. However, when the ABA lobbied for bipartisan (half-and-half) selection, Robert Kennedy thanked it for its evaluative role and stated that Republicans would be appointed but in no particular percentage (pp. 177-78). Although Kennedy faced a Congress dominated by conservative southern Democrats, he was just as cognizant as Truman and Eisenhower that one hand washes the other. Kennedy therefore appointed some Republicans, including three recess appointments left over from Eisenhower.<sup>13</sup> His approach was to arrange packages with Democratic and Republican nominees to gain support across party lines. A total of eleven Republicans were named in the three years of the Kennedy Administration (p. 190). In comparison, only nine Democrats were named in Eisenhower's eight years (p. 148) and these were often southern "Eisenhower" Democrats (p. 151). Shortly after Kennedy took office, seventy-three new judgeships were created. In a presidential first, Kennedy pledged to appoint "(m)en and women of unquestioned ability."<sup>14</sup> The majority of these appointees came from private law practice. Many were from large firms. Only 1.7% of Kennedy and Johnson nominees were solo practitioners although during those years 35% of the nation's lawyers practiced solo (p. 193). Kennedy strove for quality appointments and largely succeeded (p. 196). In only one instance did Kennedy knowingly appoint a segregationist to a circuit court, and this was after a two-and-one-half-year fight over an Arkansas seat on the Eighth Circuit (p. 168). He did, however, appoint persons with public records of racist statements to district courts (p. 167). Overall ideological orientation was less important than whether segregationist positions would be taken from the bench (p. 170). Goldman's account of Kennedy's administration is weak in his treatment of Kennedy's use of recess appointments, which he used to put Thurgood Marshall on the Second Circuit Court of Appeals. The device of a recess appointment apparently was intended to give some political cover to Judiciary Committee Chairman James Eastland of Mississippi, who, according to Robert Kennedy, delayed appointments but never caused any trouble (p. 183). There is a lot that is not said in this nonstatement of noninterference. The Kennedys and Eastland were not strangers to politics. If, as chairman, Senator Eastland was not causing trouble for a more diverse class of nominees, then what were the considerations given him in exchange? Goldman does not explore the subject. Given the Kennedy penchant for packaging nominees, it is just as easy to package other commodities - a dam or an air base or a highway bill for a judge. How these nonjudicial matters fit into the selection process should not be discounted. JOHNSON Like his mentor Roosevelt, former Senate majority leader Lyndon Johnson micromanaged judicial selection (p. 160). He appointed more law professors (five) than Truman, Eisenhower and Kennedy combined (p. 194). However, Goldman does not explore the reason behind this statistic. Was it a reflection of a Rooseveltian streak in LBJ, or his own career as a teacher, or attachments between these academics and Democratic politicians? We are left to wonder at its meaning. But we do not have to wonder at the meaning of one of

Goldman's other observations. After the passage of civil rights legislation, LBJ insisted on knowing the civil rights views of candidates for the judiciary (p. 170). Purely personal views were not a bar to appointment, however. Several judges were nominated over the objections of civil rights leaders (pp. 170-71). Local ABA committees frequently found these nominees to be well-qualified, and the backing of powerful southern senators whose votes were needed on other matters led to the usual dealmaking. On June 13, 1967, Johnson named Solicitor General Thurgood Marshall to the Supreme Court (p. 171 n.v). For the nation's black leaders this more than made up for his acceding to the requests of southern senators on other appointments. In 1966, forty-five new judgeships were created and in 1968, nine new appeals court positions were established (p. 180). The judiciary was expanding as the federal government's role in the life of the nation expanded and as the Congress put more responsibility on the courts in sustaining that role. This expansion gave the former Senate majority leader in the White House more pieces with which to play. He accommodated senators where he could on nominations and expected assistance in return on needed legislation. Using this approach, Johnson named nine more Republicans to the federal courts for a total of twenty in the Kennedy-Johnson era. This was more than twice the number of Democrats named in Eisenhower's two terms (p. 195) and reflects how the two senator-presidents grasped the relationship between cooperation and legislation. Several runners-up for judgeships in the Kennedy-Johnson years were subsequently nominated by Nixon. Johnson had four nominations lapse at the end of his last Congress. He renominated all four after Nixon was elected in November in the belief that Nixon would defer to him in the same way that JFK deferred to Eisenhower. Nixon, however, withdrew the nominations. Nevertheless, of the four, one was again nominated by Nixon, another by Ford, and a third by Carter, and all were confirmed (pp. 187 n.hh).

NIXON Richard Nixon, the first attorney to serve as President since Franklin Roosevelt, faced a Democratic Senate during his entire presidency. In 1968, opposed by Humphrey on the left and Wallace on the right, Nixon made a campaign promise to name strict constructionists to the courts (p. 198). Within a short time after his election he was able to replace Earl Warren with Warren Burger and to stage-manage the resignation of Abe Fortas from the Supreme Court (p. 198). Although the Fortas issue is barely touched in this book, the Fortas-Haynsworth-Carswell confirmation battles placed the Supreme Court nomination selection process squarely on the front burner of American politics, where it remains to this day. While Nixon seemed intensely interested in the political ramifications of Supreme Court appointments, he took little or no cognizance of the lower federal courts and the impact that individual nominees would have on either the law or politics. Nixon was more concerned with issues of grand strategy in both global and domestic affairs and was bored by the details of implementation (p. 200). Nominations for the lower federal courts were left up to the Attorney General John Mitchell, the Justice Department and more particularly to John Ehrlichman, assistant to the President for domestic affairs (pp. 202-03). At the outset of his term Nixon gave the ABA a de facto veto over nominations by agreeing that no one would be nominated whom the ABA rated "not qualified" (p. 231). Goldman infers that Nixon and Mitchell - with their Wall Street experience -- believed that the ABA shared their conservative Republican values (pp. 214-15). There are two interesting aspects of Nixon's lower court selections. The first is that he named six African Americans to federal district court benches. While the politics involved in each individual nomination is fascinating, it is even more interesting to follow the memos of White House aides as they discuss how to broaden their appeal to blacks without damaging the Nixon "southern strategy" (pp. 222-25). The second remarkable feature of Nixon's appointments is the lack of any concerted Democratic effort

in the Senate to frustrate them. This could be seen most clearly as Nixon's presidency drew to its close. The House was readying to vote on articles of impeachment and the Senate was preparing for the trial that would follow. Yet, as August 1974 opened, only one of Nixon's judicial appointees was awaiting action in the Senate Judiciary Committee. On August 8, 1974, Richard Nixon nominated three more federal judges. The next day he resigned. All four of his remaining nominees (two district judges and two appellate judges) were confirmed by a Democrat-dominated Senate (p. 226). FORD Perhaps because of the brevity of Ford's presidency, Goldman discusses his judicial nominations in tandem with Nixon's. This approach makes some sense. The demographics, personal background, and ABA and RNC involvement are similar. But it is appropriate to think of Ford's choices separately. From the beginning, Ford attempted to make a break from the style and substance of Nixon's approach by changing the type of persons who made the screening and vetting decisions at the Justice Department. He tried to restore public faith in a department once headed by the disgraced Mitchell and Kleindienst by bringing in Edward Levi of the University of Chicago as Attorney General and U.S. District Judge Harold Tyler as his deputy (p. 204). This difference in the leadership at Justice may account for the fact that there was no change in the demographic background from Nixon to Ford appointees, but that there was a change in professional experience and party affiliation. Ford relied much more heavily than Nixon on appointees who came with previous judicial experience or from prosecutorial ranks. Likewise, and perhaps because of his legislative leadership experience, he was more open to the appointment of persons identified as Democrats than Nixon had been (pp. 204-05, 226-29). A number of the Democrats came with strong Republican senatorial support or as part of a package that included Republican nominees (p. 213). Nevertheless, Ford worked closely with party leaders on lower court nominations. Besides consulting with any affected Republican senators, he routinely submitted names to the Republican National Committee for clearance. Where there were no GOP senators, he consulted with the state party leaders and elected officials before acting on nominations (p. 212). His term was too brief for anyone to venture a guess as to Ford's management or personnel style with regard to judicial nominees. At the end of the NixonFord years, however, a judiciary consisting of 70% Democratic nominees in 1969 was more than half Republican when Jimmy Carter came to town (p. 235). CARTER For a nonlawyer, President Jimmy Carter displayed a remarkable interest and involvement in judicial selection. It may have been his passion for reform and his engineer-driven desire for regular order or his tenure in the Georgia Senate and Statehouse. An opponent of patronage, Carter pledged himself to the selection of judges based solely on professional qualifications (p. 238). Carter's interest lay in the process of selection more than the individuals selected. Carter was serious about removing patronage and to that end established a Circuit Judge Nominating Commission by executive order barely four weeks into his term (p. 238). The commission had a panel from each circuit. The panels had mixed membership of race and gender and were evenly divided between lawyers and nonlawyers. The order charged the panels with the task of giving the president the names of five qualified persons for a court of appeals seat within sixty days of being notified of a vacancy. The President-elect and Attorney General-designate Griffin Bell had met with Senate Judiciary Committee Chairman James O. Eastland in December to discuss changes in judicial selection. Eastland had tried to hold firm on senatorial prerogatives but had agreed to help Carter persuade senators to establish merit selection commissions in their states for district court appointments. He agreed to a nominating commission for the courts of appeal. Before this time only two states had such nominating commissions. By 1980 there would be thirty.<sup>16</sup> Carter's approach dramatically opened the process to scrutiny and eventually produced a broader spectrum of judges to include

women and minorities and reduced the institutional influence of the ABA, while at the same time professionalizing the federal judiciary without undermining the quality of nominees by emphasizing nominees with proven judicial experience (pp. 276-81). Carter took a real interest in how the names came to his desk. The memos from White House counsel to the President and from the Attorney General to the President are annotated with handwritten comments by Carter. Some approve an arrangement. Others make subtle but significant changes in the order of the process, with the most significant ones providing that names being considered will come to the President before going out for ABA and FBI checks (pp. 244-45). The most intriguing reading in the Carter chapter concerns the war between the White House staff and Attorney General Griffin Bell over who would control selection (pp. 246-49, 254-59). Bell fought unsuccessfully to keep that control entirely within his hands. Finally, an uneasy truce was made in which control was shared. Bell insisted, however, that only the White House counsel himself would have input and not his assistants. It would probably have been less contentious had the Attorney General recognized the very high priority the President had given to recruiting qualified women and minorities and had taken steps himself to implement that goal in the early months of the administration. When names of qualified minority and women nominees did not appear in the first year, Carter was heavily criticized in the press and by supporters. His staff reacted by wresting control from the Attorney General, whose performance they felt had subjected their chief to attack. Carter's great opportunity both to reform the process and to transform the makeup of the courts came from the Omnibus Judgeship Act of 1978 (pp. 241-44). Reflecting the increasing federal court docket and the federalization of much of the criminal law, Congress created 117 new federal trial judges and thirty-five new appellate judges. The numbers alone meant that there would be room both for senators and representatives to try to accommodate patronage needs and for the President to put minorities and women on the federal bench. Carter largely achieved his process-oriented objectives. True to his word on patronage, for example, he did not appoint any close friends to the bench. Goldman observes that Carter had no personal agenda and there is no evidence that he even suggested a possible judicial candidate for any vacancy (p. 260). As to party considerations, the Attorney General stopped references to a nominee's political affiliations in April 1978 and Carter himself never submitted any of his nominations to the Democratic National Committee for clearance (p. 264). This measure of openness was reflected in the Senate where, beginning in 1979 with Senator Kennedy assuming the Judiciary Committee chairmanship, blue slips could no longer be used to block action on a nomination. Every nomination would be considered, and a home-state senator's dissatisfaction was now just another factor for the committee to consider (p. 263). Candidate Ronald Reagan promised to continue Carter's progress and to seek out women for appointment to the federal courts to achieve "a better balance" (p. 284). REAGAN Ronald Reagan, like Carter a former governor, was as detached from the selection process as Carter had been involved. But the Reagan Administration came to Washington with a firm grasp on its political ideology and its underlying belief system. This ideology would guide judicial appointments. Unlike the Carter administration, implementation under Reagan was not overseen by the President, but by Attorney General William French Smith, presidential counselor Edwin Meese III, and White House counsel Fred Fielding (pp. 286-91). They abolished the commission approach of the Carter years but insisted that three to five names be submitted to the White House for each vacancy to give them more flexibility (p. 290). An Office of Legal Policy was created at the Justice Department, headed by an Assistant Attorney General. The office became the clearinghouse for judicial nominations. A special counsel for judicial selection was also created. These officers, the AG, and the White